

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability  
Litigation,

No. 2:15-MD-02641-DGC

This Document Relates to:

Debra Tinlin, et al. v. C. R. Bard, Inc., et al.  
CV-16-00263-PHX-DGC

**PROPOSED FINAL PRETRIAL  
ORDER**

(Assigned to the Honorable David G.  
Campbell)

The following is the joint Proposed Final Pretrial Order to be considered at the  
Final Pretrial Conference set for April 29, 2019.

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## **B. STATEMENT OF JURISDICTION**

1. Jurisdiction is appropriate in this Court as the parties to this action are citizens of different states and Plaintiffs allege that they have suffered damages in an amount exceeding the minimum jurisdictional limits of this Court, 28 U.S.C. § 1332.

2. Plaintiffs are citizens of the state of Wisconsin. Defendant C. R. Bard, Inc. (“Bard”) is a citizen of the state of Delaware and is a corporation duly organized and existing under the laws of the state of Delaware, with its principal place in New Jersey. Defendant Bard Peripheral Vascular, Inc. (“BPV”) is a citizen of the state of Arizona, is a wholly owned subsidiary corporation of defendant Bard, and is duly organized and existing under the laws of the state of Arizona with its principal place of business in Arizona.

### 3. Jurisdiction is not disputed.

**C. STIPULATIONS AND UNCONTESTED FACTS AND LAW**

1. The following material facts are admitted by the parties and require no proof:

a. The Defendants in this case are C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (“BPV”). BPV is the wholly-owned subsidiary of C. R. Bard, Inc., the parent company. Throughout this case, including in this pretrial order, the jury instructions and the verdict form, C. R. Bard, Inc. and BPV will be referred to collectively as “Bard” or “Defendants.”

b. The product that is the subject of this lawsuit is a Bard Recovery IVC Filter (“Filter”) that was designed, manufactured, marketed and sold by Bard;

c. The Filter consists of a main cap to which twelve struts (six "arms" and six "legs") are attached;

d. The Filter is constructed of a nickel-titanium alloy called Nitinol;

e. The Filter is a medical device that is implanted in the inferior vena cava (“IVC”), the largest vein in the human body;

f. The United States Food and Drug Administration (“FDA”) cleared the Filter for commercial availability through the 510(k) process outlined in the Food, Drug and Cosmetic Act (“FCDA”);

g. On November 27, 2002, the FDA cleared the Recovery IVC Filter for commercial availability in the United States for use in patients as a permanent filter. On July 25, 2003, the FDA further cleared the Recovery IVC filter for use in patients as a retrievable device.

h. In May, 2005, Plaintiff Debra Tinlin was diagnosed with bilateral DVT and pulmonary embolism.

i. Plaintiff Debra Ann Tinlin was under the care of Diana Christel, M.D., who referred Mrs. Tinlin to Dr. Joshua Riebe, a radiologist, to consult with Mrs. Tinlin regarding possible IVC filter placement.

j. On May 7, 2005, Dr. Joshua Riebe implanted the Filter in  
Mrs. Tinlin's inferior vena cava.

3           k.       On June 10, 2013, Mrs. Tinlin was brought to the Emergency  
4 Department at Aurora Bay Care Medical Center in Green Bay, Wisconsin. A CT scan of  
5 her chest revealed two fractured, embolized arms of the Filter in the right ventricle.

6           1. On July 30, 2013, David Charles Kress, MD removed an embolized  
7 IVC arm in Mrs. Tinlin's right heart ventricle through open heart surgery. Dr. Kress could  
8 not find the second embolized arm despite also exploring Mrs. Tinlin's left ventricle.

9                   m.     On August 7, 2013, a follow-up chest CT demonstrated the filter with  
10 only one arm remaining fully attached. Three embolized arms were in various locations of  
11 Mrs. Tinlin's pulmonary arteries. The filter remains implanted.

12        2. The following material facts, although not admitted, will not be contested at  
13 trial by evidence to the contrary:

14 Plaintiffs are not seeking to recover past or future lost wages as part of their  
15 damages.

3. The following issues of law are uncontested and stipulated to by the parties:

17                   a. Plaintiffs' claims and Bard's defenses are governed by Wisconsin  
18 substantive law.

19                           b. The law enumerated in any jury instructions stipulated to by the  
20 Parties.

21                   c.       The parties stipulate and agree that they are prohibited from making  
22 any reference or argument, or attempting to elicit any evidence in front of the jury  
23 suggesting and/or concerning the following topics, unless the issue is first raised with the  
24 Court outside the presence of the jury:

25 i. Plaintiffs' receipt of compensation for her medical bills and  
26 expenses (collateral source);

1 deposition and trial testimony will be referred to as “prior testimony.” The parties also  
 2 agree not to refer to the number of times a witness has been deposed or testified at trial.

3                   iii.     C. R. Bard’s 1994 criminal conviction.

4                   iv.      Expert opinion testimony by Mr. or Mrs. Tinlin regarding her  
 5 medical care and treatment.

6                   v.        Mrs. Tinlin’s previous miscarriages.

7                   vi.      Mrs. Tinlin’s Stage III chronic kidney disease.

8                  **D. CONTESTED ISSUES OF FACT AND LAW**

9                  **1. Disputed issues of fact.**

10                 a.      **Design Defect:** Whether the filter implanted in Plaintiff Debra Tinlin  
 11 had a Design Defect.

12                 i.       **Plaintiffs’ Contention:** Mrs. Tinlin contends that the Filter she  
 13 received was defective in design, in a condition not contemplated by the ordinary user or  
 14 consumer which is unreasonably dangerous to the ordinary user or consumer. Mrs. Tinlin  
 15 further contends nearly all of the arms of the Filter implanted in her fractured after it was  
 16 properly implanted in her vena cava; that almost all of the Filter struts perforated through  
 17 her vena cava; that three embolized arms are in various locations of Mrs. Tinlin’s  
 18 pulmonary arteries; that one arm penetrated the interventricular septum; that one of the  
 19 struts of the Filter embolized/migrated to the right ventricle of the heart, requiring  
 20 interventional open heart surgery. The open heart surgery resulted in yet further harm and  
 21 ongoing injuries to Ms. Tinlin. Ms. Tinlin’s injuries from the filter are ongoing and  
 22 require ongoing care.

23                 ii.      Lastly, foreseeable risks of harm posed by the Filter’s design  
 24 could have been reduced or avoided by the adoption of a reasonable alternative design by  
 25 the manufacturer and the omission of such alternative design rendered the product not  
 26 reasonably safe. Plaintiffs reference and incorporate their Trial Brief on Wisconsin law  
 27 concerning this issue, filed in the *Hyde* case, *see* Dkt. 12400, and reserve the right to  
 28 respond to any further trial briefs filed by Bard.

11 i. Plaintiffs' Contention: Mrs. Tinlin contends that the defective  
12 design of her Bard Filter caused or contributed to cause her injuries.

16                           c.     **Negligent Design** – Whether Bard was negligent in the design of the  
17 Filter.

1 and ongoing injuries to Ms. Tinlin. Ms. Tinlin's injuries from the filter are ongoing and  
2 require ongoing care.

3                 ii.     Defendants' lack of proper testing of the filter is evidence of  
4 their failure to act reasonably and use the proper degree of care, as well as their breach of  
5 the duty of care. Plaintiffs reference and incorporate their Trial Brief on Wisconsin law  
6 concerning this issue, filed in the *Hyde* case, *see* Dkt. 12400, and reserve the right to  
7 respond to any further trial briefs filed by Bard.

8                 iii.    Defendants' Contention: Defendants deny they were negligent  
9 in the design of the filter. Defendants have filed a separate Trial Brief on this issue. (Dkt.  
10 16944).

11                 d.     **Negligent Design Causation:** Whether a design defect of the Filter  
12 was a substantial factor in causing the Plaintiffs' alleged injuries and damages.

13                 i.     Plaintiffs' Contention: Mrs. Tinlin contends that Bard's  
14 negligence caused or contributed to cause her injuries and damages.

15                 ii.    Defendants' Contention: Bard denies that any alleged design  
16 defect in the filter caused or contributed to Ms. Tinlin's injuries.

17                 e.     **Strict Liability – Failure to Warn:** Whether Bard failed to  
18 adequately warn of the dangers arising from the use of the Recovery filter about which it  
19 knew or reasonably should have known.

20                 i.     Plaintiffs' Contention: Mrs. Tinlin contends that Bard's  
21 warnings were inadequate, that those warnings were inadequate when the Recovery filter  
22 left Bard's control, and that the inadequate warning was a proximate cause of her injuries.  
23 Mrs. Tinlin contends that Bard failed to provide adequate warnings of the Recovery  
24 filter's potential dangers and that Bard failed to adequately communicate adequate  
25 warnings to Mrs. Tinlin's physicians. Mrs. Tinlin contends that Bard failed to provide an  
26 adequate warning of the Recovery filter's unacceptable safety risks or failed to adequately  
27 communicate warnings to Mrs. Tinlin's physicians prior to and at the time of implantation  
28 and thereafter. Mrs. Tinlin further contends that the Recovery filter implanted in her

1 failed after it was properly implanted, that she suffered injuries as a result of that failure,  
2 that no reasonable doctor would have implanted the Recovery filter had Bard given  
3 adequate warnings, that Mrs. Tinlin's doctors would not have implanted the Recovery  
4 filter had they been adequately warned about the Recovery filter's unacceptable safety  
5 risks and/or would have intervened after implantation of the filter to prevent or mitigate  
6 injury, and, Bard's failure to warn about the safety risks of the Recovery filter and/or  
7 failure to adequately communicate those risks to her doctors resulted in injury and damage  
8 to Mrs. Tinlin. In addition, Mrs. Tinlin contends that Bard's duty to warn is a continuing  
9 one, including the duty to warn both her and her physicians, and the duty to warn  
10 continued after the date of the first sale of the Recovery filter and after implantation of the  
11 Recovery filter in Mrs. Tinlin. Lastly, Mrs. Tinlin contends that Bard failed to meet its  
12 continuing duty to provide adequate warnings and/or adequately communicate those  
13 warnings to Mrs. Tinlin and her physicians.

14                   ii.     Defendants' Contention: Defendants deny that its warnings  
15 were not adequate. They warned of the very conditions Ms. Tinlin alleges occurred in her  
16 filter. Defendants also contend that, under the learned intermediary rule, any duty to warn  
17 ran to the implanting physician, rather than to the plaintiff herself. Further the implanting  
18 physician did not read the warnings. Defendants have filed a separate Trial Brief on this  
19 issue. (Dkt. 16944).

20                   As to Plaintiffs' "continuing duty to warn" claim, despite failing to pursue this  
21 legal theory during litigation, including in their briefing in response to Bard's motion for  
22 summary judgment, Plaintiffs now contend Bard had a post-sale duty to warn in this case.  
23 However, Plaintiffs should be barred from presenting argument on this theory to the jury  
24 or presenting evidence in support because this case does not present the "specific context"  
25 in which the Wisconsin Supreme Court has recognized such a duty and, further, Plaintiffs  
26 cannot meet the elements of such a claim. *See Olsen by Olsen v. Ohmeda, Div. of Boc*  
27 *Grp., Inc.*, 863 F. Supp. 870, 875 (E.D. Wis. 1994), *aff'd sub nom. Wisconsin Health Care*  
28

1      *Liab. Ins. Plan v. Ohmeda, a Div. of BOC Grp., Inc.*, 77 F.3d 485 (7th Cir. 1996);

2      *Kozlowski v. John E. Smith's Sons Co.*, 87 Wis.2d 882, 275 N.W.2d 915 (1979).

3            The Wisconsin Supreme Court has only recognized a post-sale duty to warn in a  
 4 specific context: when the nature of the industry is such that the product has a “limited  
 5 market” wherein the manufacturer should know of “all [customers] that own its product.”  
 6 *Kozlowski*, 87 Wis.2d at 900-01, 275 N.W.2d at 923; *see also Olsen*, 863 F. Supp. at 875.  
 7 This case does not fall within that narrow context because Bard’s customers are  
 8 physicians and Bard is unable, because of privacy laws, to know all of the patients who  
 9 receive and “own” a Bard IVC filter implant. The Plaintiffs also cannot meet a critical  
 10 element of a post-sale duty to warn claim as articulated by *Kozlowski* because they cannot  
 11 show that Bard developed a safety feature which could be subsequently added to  
 12 Plaintiff’s Recovery Filter. *See Olsen*, 863 F. Supp. at 875 (indicating *Kozlowski* required  
 13 a showing that manufacturer must have developed a subsequent, addable safety feature for  
 14 the product).

15            Plaintiffs’ rely on *Bushmaker v. A. W. Chesterton Co.*, 09-cv-726-SLC, 2013 WL  
 16 11079371 (W.D. Wis. Mar. 1, 2013) (*Bushmaker I*) to support their argument regarding  
 17 the alleged elements of a “continuing duty to warn.” But *Bushmaker I* is wrongly decided.  
 18 The post-sale duty to warn recognized by the Wisconsin Supreme Court in *Kozlowski* is  
 19 narrow and requires, *inter alia*, (a) that the manufacturer know of all customers that own  
 20 its product, (b) that a safety feature be added to the product at issue at some point in time  
 21 after sale, and (c) that the manufacturer fail to warn it’s known customers of the  
 22 availability of the safety feature. *See Kozlowski*, 87 Wis.2d at 900-01, 275 N.W.2d at 923  
 23 *Bushmaker I* greatly expanded the duty recognized in *Kozlowski*, concluding that a post-  
 24 sale duty to warn may arise—even in the absence of a “limited market,” where the  
 25 defendant knows “all” of the customers who “own the product,” and when the defendant  
 26 subsequently added safety feature to the product—if “it was both practically and  
 27 economically feasible for the defendant to have provided warnings and that any warnings  
 28 would have been effective in reaching the users of its products.” *Bushmaker I*, 2013 WL

1 11079371 at \*8. To reach this conclusion, the court inappropriately relied on *Sharp ex rel.*  
 2 *Gordon v. Case Corp.*, 227 Wis.2d 1 (Wis. 1999) and the fact that in *Sharp*, the issue of  
 3 post-sale duty to warn was submitted to the jury. *See Bushmaker I*, 2013 WL 11079371 at  
 4 \*6-7. But *Bushmaker I* acknowledges that it is unclear in *Sharp* whether “the viability of a  
 5 post-sale failure to warn theory was ever in dispute.” *Bushmaker I*, 2013 WL 11079371 at  
 6 \*7.<sup>1</sup> The *Bushmaker I* court also erroneously relied on the *Restatement (Third) of Torts:*  
 7 *Products Liability* § 10, even though it recognized “Wisconsin has not adopted § 10.”  
 8 *Bushmaker I*, 2013 WL 11079371 at \*8. Given the Wisconsin Supreme Court’s binding  
 9 precedent in *Kozlowski* that articulates the narrow circumstances in which a post-sale duty  
 10 to warn may arise, it was inappropriate for the *Bushmaker I* court to expand Wisconsin  
 11 law by relying on a case (*Sharp*) that did not directly address the issue and the  
 12 Restatement (Third) § 10, which the Wisconsin legislature has not adopted.<sup>2</sup>

13 Finally, even if this Court is persuaded that *Bushmaker I* accurately articulated a  
 14 post-sale duty to warn under Wisconsin law, Plaintiffs have failed to make the requisite  
 15 showing under *Bushmaker I*. Plaintiffs have disclosed no evidence during discovery to  
 16 indicate “that it was both practically and economically feasible for the defendant to have  
 17 provided warnings and that any warnings would have been effective in reaching the users  
 18 of its products.” *Bushmaker v. A. W. Chesterton Co.*, No. 09-CV-726-SLC, 2013 WL  
 19 11079371, at \*8 (W.D. Wis. Mar. 1, 2013). Such a showing is required *before* a claim for  
 20 post-sale duty to warn can be presented to a jury. *See Bushmaker v. A. W. Chesterton Co.*  
 21 (*Bushmaker II*), No. 09-CV-726-SLC, 2013 WL 842666, at \*3 (“Although the court’s  
 22 initial review of plaintiff’s proffer on Sunday afternoon seemed sufficient to allow him to

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23 <sup>1</sup> The issue of whether a post-sale duty to warn exists was addressed in the Wisconsin  
 24 Court of Appeals’ decision in *Sharp*. *See Sharp v. Case Corp.*, 216 Wis.2d 113 (Table  
 25 Decision), 573 N.W.2d 899, 1997 WL 757498 (Wis. Ct. App. 1997). But that opinion is  
 26 an unpublished opinion that carries no precedential value. *See* Wis. Rules of Appellate  
 27 Procedure, Rule 809.23(3).

28 <sup>2</sup> This is in stark contrast to Wisconsin’s clear legislative decision to adopt Restatement  
 29 (Third) § 2 by enacting Wis. Stat. § 895.047(1)(a). (*See* Bard’s trial brief on this issue  
 filed in Hyde [Dkt. No. 12358] at 4-6 (describing how Wis. Stat. § 895.047(1)(a) is a  
 codification of Restatement (Third) § 2).)

1 proceed on this theory, upon more careful consideration, I am now—and dispositively—  
 2 persuaded that plaintiff does not have sufficient evidence from which a jury reasonably  
 3 could conclude that it would have been technically and economically feasible for Philip  
 4 Carey to have issued post-sale warnings that could have been effectively communicated to  
 5 and acted upon by the end users of its products.”). Consequently, Plaintiffs should be  
 6 barred from presenting this legal theory or evidence to support it at trial.

7                   f.     **Strict Liability – Failure to Warn – Causation:** Whether Bard’s  
 8 warnings or lack of warnings were a substantial factor in causing the Plaintiffs’ alleged  
 9 injuries and damages.

10                  i.     Plaintiffs’ Contention: Mrs. Tinlin contends that Bard’s failure  
 11 to adequately warn of its dangers arising from its Recovery filter of which Bard knew or  
 12 reasonably should have known, and/or Bard’s failure to adequately communicate those  
 13 dangers to Plaintiff and her doctors, caused or contributed to cause her injuries.

14                  ii.    Defendants’ Contention: Bard denies that any alleged defect  
 15 in the warnings caused or contributed to Ms. Tinlin’s injuries.

16                  g.     **Negligent Failure to Warn:** Whether Bard was negligent in the  
 17 warning provided about the risks of the Recovery filter.

18                  i.     Plaintiffs’ Contention: Mrs. Tinlin contends that Bard owed  
 19 her a duty of reasonable care to provide adequate an appropriate warnings as to the  
 20 complications and dangers of the Recovery filter, Bard breached that duty of care, Bard’s  
 21 breach was a proximate cause of her injuries, and she suffered damages. Mrs. Tinlin  
 22 contends that Bard failed to use that degree of care which is used by ordinary careful  
 23 persons under the same or similar circumstances in providing adequate warnings in  
 24 communicating adequate warnings regarding the Recovery filter. Mrs. Tinlin further  
 25 contends that the Recovery filter implanted in her IVC failed; that her doctors would not  
 26 have implanted the Recovery filter in had they been adequately warned about the  
 27 Recovery filter’s safety risks and/or would have intervened to prevent or mitigate injury  
 28 after implantation of the filter; and that Bard’s negligence in the design and/or testing of

1 its filter, and negligent failure to adequately warn of the dangers associated with that filter  
 2 and/or communicate that warning to her doctors, caused her injury and damage.  
 3 Additionally, Mrs. Tinlin contends Bard failed to meet its continuing duty to provide  
 4 adequate warnings and/or adequately communicate those warnings to Mrs. Tinlin and her  
 5 doctors.

6                   ii.     Defendants' Contention: Defendants deny they were negligent  
 7 in providing the warnings about the risks of the filter. Defendants also contend that, under  
 8 the learned intermediary rule, any duty to warn ran to the implanting physician, rather  
 9 than to the plaintiff herself. Further, the implanting physician did not read the warnings.  
 10 Defendants have filed a separate Trial Brief on this issue. (Dkt. 16944).

11                  h.     **Negligent Failure to Warn – Causation:** Whether any alleged  
 12 negligence in providing warnings regarding the Recovery filter was a substantial factor in  
 13 causing the Plaintiff's alleged injuries and damages.

14                  i.     Plaintiffs' Contention: Mrs. Tinlin contends that Bard's  
 15 negligence caused or contributed to cause her injuries and damages.

16                  ii.    Defendants' Contention: Bard denies that it was negligent in  
 17 providing a warning and that any alleged defect in the warnings caused or contributed to  
 18 Ms. Tinlin's injuries.

19                  i.     **Compensatory Damages -** Whether Plaintiffs are entitled to  
 20 damages and, if so, the amount of the damages.

21                  i.     Plaintiffs' Contention: Mrs. Tinlin contend she sustained  
 22 injuries and damages and is entitled to a damage award for the following: medical  
 23 expenses, such as hospital, doctor, and medicine bills both in the past and in the future;  
 24 mental and physical pain and suffering in the past, present and future; impairment of  
 25 bodily or physical faculties in the past, present and future; and disability and  
 26 disfigurement in the past, present, and future. Plaintiffs also seek loss of consortium  
 27 damages for Mr. Tinlin.

28

ii. Defendants' Contention: Defendants contend that Plaintiffs are not entitled to recover compensatory damages.

iii. Mr. Hyde's loss of consortium is an independent cause of action that constitutes a direct injury to the spouse of the injured party. *Kottka v. PPG Indus., Inc.*, 388 N.W.2d 160, 170 (Wis. 1986). However, a spouse's loss of consortium is derivative in the sense that it does not arise unless the other spouse has sustained an injury. *Blunt v. Medtronic, Inc.*, 760 N.W.2d 396, 404 n.12 (Wis. 2009). "As a result, the merits of the loss of consortium claim would be considered by the jury only if they find Defendants liable for one of the Plaintiffs' claims.

j. **Punitive Damages** - Whether Plaintiffs are entitled to an award of punitive damages and, if so, the amount of the award.

i. Plaintiffs' Contention: Mrs. Tinlin contends that there is evidence that Bard acted maliciously towards Plaintiffs and/or in an intentional disregard of the rights of the Plaintiffs. Bard acted with the purpose to disregard the Plaintiffs' rights, or was aware that its acts were substantially certain to result in the plaintiffs' rights being disregarded. It acted deliberately, with actual disregard of the plaintiffs' right to safety, health or life, and acted in a sufficiently aggravated manner to warrant punishment by punitive damages whether or not Bard intended to cause harm or injury to Mrs. Tinlin. The amount of punitive damages will be determined by the jury after considering the seriousness of the hazard to the public, the profitability of the misconduct, the attitude and conduct on the discovery of the misconduct, the degree of the manufacturer's awareness of the hazard and of its excessiveness, the employees involved in causing or concealing the misconduct, the duration of both the improper behavior and its concealment, the financial condition of Bard and the probably effect on the Bard of a particular judgment, and the total punishment the manufacturer will probably receive from other sources.

ii. Punitive damages under Wisconsin law are governed by Wis. Stat. § 895.043. Pursuant to section 3, a “plaintiff may receive punitive damages if evidence is submitted showing that the defendant acted maliciously toward the plaintiff or

1       in an intentional disregard for the rights of the plaintiff.” Wis. Stat. § 895.043(3). “[T]he  
 2       purpose of punitive damages is to punish the wrongdoer, and to deter the wrongdoer and  
 3       others from similar conduct, rather than to compensate the plaintiff for any loss.... [O]nly  
 4       when an award can be fairly categorized as ‘grossly excessive,’ in relation to the [S]tate’s  
 5       interests in punishment and deterrence, does it enter the zone of arbitrariness that violates  
 6       due process.” *J.K. v. Peters*, 808 N.W.2d 141, 154 (Wis. Ct. App. 2011).

7                     iii.        “In order to meet the ‘intentional disregard’ standard, the  
 8       defendant’s conduct must be (1) deliberate, (2) in actual disregard of the rights of another,  
 9       and (3) ‘sufficiently aggravated to warrant punishment by punitive damages.’ *Centrifugal*  
 10      *Acquisition Corp. v. Moon*, 849 F. Supp. 2d 814, 839 (E.D. Wis. 2012) (citing *Berner*  
 11      *Cheese Corp. v. Krug*, 312 Wis.2d 251, 752 N.W.2d 800, 814 (2008)). A defendant’s  
 12      conduct giving rise to punitive damages need not be directed at the plaintiff seeking  
 13      punitive damages. This burden does not require a plaintiff to show that defendant intended  
 14      to cause harm or injury to the plaintiff. *Wosinski v. Advance Cast Stone Co.*, 901 N.W.2d  
 15      797, 820-21 (Wi. Ct. App. 2017) (citing *Strenke v. Hogner*, 694 N.W.2d 296 (Wis.  
 16      2005).).

17                     iv.        “If the finder of fact concludes punitive damages are available  
 18      and decides to award them, it then determines the amount of punitive damages by  
 19      considering factors such as the grievousness of the defendant’s acts, the degree of malice  
 20      involved, the potential damage which might have been done by such acts as well as the  
 21      actual damage, and the defendant’s ability to pay.” *Centrifugal Acquisition Corp. v.*  
 22      *Moon*, 849 F. Supp. 2d 814, 839 (E.D. Wis. 2012) (quoting *Boelter v. Tschantz*, 779  
 23      N.W.2d 467, 474 (Wis. Ct. App. 2009)). A plaintiff who establishes a prima facie case for  
 24      punitive damages may introduce evidence of the defendant’s wealth, and the “judge shall  
 25      submit to the jury a special verdict as to punitive damages....” Wis. Stat. § 895.043(4).

26      Other factors which may be considered include:

- 27                     A.        the seriousness of the hazard to the public;  
 28                     B.        the profitability of the misconduct;

- C. the attitude and conduct on discovery of the misconduct;
- D. the degree of the manufacturer's awareness of the hazard and of its excessiveness;
- E. the employees involved in causing or concealing the misconduct;
- F. the duration of both the improper behavior and its concealment;
- G. the financial condition of the manufacturer and the probable effect on the manufacturer of a particular judgment; and
- H. the total punishment the manufacturer will probably receive from other sources.

v. Defendants' Contention: Defendants deny that Plaintiffs are entitled to recover punitive damages. Punitive damages are not warranted because there is no evidence that Bard acted maliciously toward Mrs. Tinlin or in an intentional disregard of her rights. Punitive damages are governed by statute, *see* W.S.A. 895.043, and they are imposed for the dual purposes of deterrence and punishment. *See Kimble v. Land Concepts, Inc.*, 845 N.W.2d 395, 406 (Wis. 2014). They may be awarded only when the jury finds by clear and convincing evidence that “the defendant acted maliciously toward the plaintiff or in an intentional disregard of the plaintiff’s rights.” W.S.A. 895.043(3). By enacting this statute, Wisconsin’s Legislature changed the common law and heightened the state-of-mind requirement of a defendant from a “wanton, willful and reckless” disregard for another’s rights to an “intentional disregard” for another’s rights. *Berner Cheese Corp. v. Krug*, 752 N.W.2d 800, 814 (Wis. 2008) (citations and quotations omitted). Indeed, according to the Wisconsin Supreme Court, by passing the punitive damages statute, “the legislature tried to make it harder for plaintiffs to recover punitive damages.” *Strenke*, 694 N.W.2d at 303.

1                         vi.     Malicious conduct under the statute means acts that “are the  
 2 result of hatred, ill will, desire for revenge, or inflicted under circumstances where insult  
 3 or injury is intended.” *Id.* at 302 (internal quotation marks and citation omitted).  
 4 Intentional disregard means a person “acts with the purpose to disregard the plaintiff’s  
 5 rights, or is aware that his or her acts are substantially certain to result in the plaintiff’s  
 6 rights being disregarded.” *Id.* at 304. “[T]he act or conduct must actually disregard the  
 7 rights of the plaintiff.” *Id.* “Finally, the act or conduct must be sufficiently aggravated to  
 8 warrant punishment by punitive damages.” *Id.* at 304–05.

9                         vii.    Punitive damages cannot be awarded if the alleged malicious  
 10 or intentional disregard conduct did not cause the plaintiff’s injury. “Juries are not given  
 11 license to roam the caverns of their consciences to punish conduct they deem despicable  
 12 unless a plaintiff can prove that he or she has suffered some actual damage as a result of  
 13 the conduct.” *Kehl v. Economy Fire & Cas. Co.*, 147 Wis. 2d 531, 534 (Wis. App. 1988).  
 14 In other words, punitive damages may not be awarded based on conduct that did “not  
 15 cause or contribute to the plaintiff’s loss.” *Henrikson*, 758 N.W.2d at 211.

16                         viii.   The trial court must serve as a “gatekeeper[] before sending a  
 17 question on punitive damages to the jury.” *Strenke*, 694 N.W.2d at 305. “[A] question on  
 18 punitive damages may not be given to the jury unless the trial court concludes that a  
 19 reasonable jury could find from the evidence that entitlement to punitive damages has  
 20 been proven by the middle burden of proof, clear and convincing evidence.” *Id.* (internal  
 21 quotation marks and citation omitted). Thus, “punitive damages are not recoverable if the  
 22 wrongdoer’s conduct is merely negligent.” *Id.* “Only when the conduct is so aggravated  
 23 that it meets the elevated standard of an ‘intentional disregard of rights’ should a circuit  
 24 court send the issue to a jury.” *Id.*

25                         ix.     A plaintiff is “not entitled to punitive damages as a matter of  
 26 right.” *Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 458 (Wis. 1980). Thus, even if the  
 27 issue of punitive damages makes it to a jury, and a jury finds that a defendant’s conduct  
 28 meets the requisite standard of conduct, a jury does not have to award punitive damages.

1       *Id.* Rather, punitive damages may be withheld at the jury's discretion; its refusal to award  
 2 punitive damages is not reviewable. *Id.* But the jury may not award punitive damages  
 3 unless it has also awarded compensatory damages. *Tucker v. Marcus*, 418 N.W.2d 818,  
 4 820 (Wis. 1988).

5                   x.       Wisconsin law provides that punitive damages may not exceed  
 6 twice the amount of compensatory damages recovered by the plaintiff, or \$200,000,  
 7 whichever is greater. Wis. Stat. § 895.043(6).

8                   k.       **Allocation of fault: Whether the jury may consider the  
 9 negligence of Dr. Joshua Riebe and Dr. Robert Haller and allocate a percentage of  
 10 negligence to either or both of them.**

11                  i.       Defendants' Contention: The jury is entitled to consider the  
 12 negligence of both Dr. Joshua Riebe and Dr. Robert Haller and to allocate a percentage of  
 13 negligence to each of them because their actions caused or contributed to Mrs. Tinlin's  
 14 injuries. *See, Connar v. W. Shore Equip. of Milwaukee, Inc.*, 227 N.W.2d 660, 662 (Wis.  
 15 1975) ("It is established without doubt that, when apportioning negligence, a jury must  
 16 have the opportunity to consider the negligence of all parties to the transaction, whether or  
 17 not they be parties to the lawsuit and whether or not they can be liable to the plaintiff or to  
 18 the other tort-feasors either by operation of law or because of a prior release. . . . At the  
 19 requested-special-verdict-stage of a lawsuit, it is immaterial that the entity is not a party or  
 20 is immune from further liability[;] the apportionment must include all whose negligence  
 21 may have contributed to the arising of the cause of action."); *Johnson v. Heintz*, 243  
 22 N.W.2d 815, 826-827 (Wis. 1976) ("When the harm may be attributed to the concurring  
 23 breaches of duties of two or more actors, a similar rationale has stimulated the  
 24 development of our comparative negligence special verdict system to facilitate financial  
 25 apportionment of the resulting expense on the basis of degree of culpability. . . .  
 26 [Nonparties] activity may have been slight in its contribution to the impacts, but under the  
 27 evidence here a special verdict embracing all of the actors could have been requested.")  
 28 Defendants have filed a separate Trial Brief on this issue. (Dkt. 16946).

1                   ii.     Plaintiffs' Contention: As set forth in Plaintiffs' Motion *In  
 2 Limine* No. 1, because Mrs. Tinlin "exercised good faith and due care in the selection of  
 3 [her] treating physician[s] . . . under the *Selleck* rule the defendants are liable for the full  
 4 amount of damages caused by the aggravation." *Fouse v. Persons*, 259 N.W.2d 92, 95  
 5 (Wis. 1977). Here, Bard has not alleged that Mrs. Tinlin failed to exercise good faith and  
 6 due care in selecting her treating physicians, so any alleged negligence by her doctors is  
 7 irrelevant, and the jury should not be requested to allocate fault or damages. Instead, the  
 8 jury must decide whether Defendants' actions were a substantial factor in causing the  
 9 injuries alleged. WIS-JI-CIVIL 1023; WIS JI-CIVIL 1500.

10                  The cases cited by the Defendants are inapposite. *Connar v. W. Shore Equip., Inc.*,  
 11 required apportionment only for those "whose negligence may have contributed to the  
 12 arising of the cause of action," 227 N.W.2d 660, 662 (Wis. 1975), while here, any alleged  
 13 negligence on behalf of Mrs. Tinlin's physicians occurred at a later time and did not form  
 14 a basis for the causes of action relating to the filter failure. In *Johnson v. Heintz*, the  
 15 Wisconsin Supreme Court specifically distinguished between two tortfeasors whose  
 16 "actions concur in time . . . to create an injury-producing situation," and where the actions  
 17 of others "resulted in distinguishable separate injuries to the same subject." 243 N.W.2d  
 18 815, 826 (Wis. 1976) (citing Prosser, *Law of Torts*, p. 317, sec. 52 (4th ed. 1971)). Where  
 19 there are separate injuries, or where an original injury is aggravated, as in the  
 20 malpractice context, "there are separate torts rather than joint liability," and  
 21 apportionment is improper. *Id.*

22                  Moreover, even if Wisconsin law provides for the allocation of fault in this case,  
 23 Bard lacks the required expert opinion that the alleged negligence of Dr. Riebe and  
 24 Dr. Haller was the proximate cause of and substantial factor in causing any injury, so a  
 25 directed verdict is proper on this issue.

26                  **2. Disputed issues of law**

27                  The following was proposed by Plaintiffs as issues of law that are uncontested and  
 28 stipulated to by the parties, but was not agreed to by Bard:

### **a. Product Liability (General Aspects)**

Wisconsin's product liability law is a statutory scheme, enacted in 2011. *Forsythe v. Indian River Transp. Co.*, 344 Wis. 2d 520 (Wis. 2012). Common law is not superseded by the 2011 enacted statutory scheme. If pre-2011 common law rulings are not inconsistent with the statute, they stand. "Wisconsin's 2011 codification of its product liability law generally does not supersede the common law." *Janusz v. Symmetry Med. Inc.*, 256 F. Supp. 3d 995, 1000–01 (E.D. Wis. 2017).

### **b. Strict Liability (General Aspects)**

Wisconsin Jury Instruction-Civil 3200 sets forth the elements of a strict liability claim as follows: “(1) that the product was in a defective condition unreasonably dangerous; (2) that the product was defective when it left the possession or control of the seller; (3) that the defect was a cause (substantial factor) of the plaintiffs’ injury; (4) that the seller was engaged in the business of selling such products (it does not apply to an isolated or infrequent sale); and (5) that the product was one which the seller expected to and did reach the consumer without substantial change.”

**c. Design Defect (Negligent and Strict Liability)**

Under Wisconsin law, negligent or defective design is generally a jury question. *See, e.g., Tidmore v. Midwest Trailer Sales, Inc.*, 2007 WL 5390049 (Wis. Cir. Ct. 2007). “As the Seventh Circuit has recognized, there is significant overlap between [negligent and strict liability] claims. *See Krien v. Harsco Corp.*, 745 F.3d 313, 317 (7th Cir. 2014) (“[A] claim of strict products liability is much like a negligence claim because it requires proof either that the product was unreasonably dangerous or, what amounts to the same thing, that it was defective.”).

To succeed on a negligence claim, Plaintiffs must prove:

1. the existence of a duty of care on the part of the defendant,
  2. a breach of that duty of care,
  3. a causal connection between the defendant's breach of the duty of care and the plaintiffs' injury, and

1           4. actual loss or damage resulting from the [breach].

2       *Kilty v. Weyerhaeuser Co.*, 16-CV-515-WMC, 2018 WL 2464470, at \*3–4 (W.D. Wis.  
3 June 1, 2018) (citing *Hoida, Inc. v. M & I Midstate Bank*, 2006 WI 69, ¶ 23, 291 Wis. 2d  
4 283, 717 N.W.2d 17); *Forsythe v. Indian River Transp. Co.*, 344 Wis. 2d 520 (Wis. 2012).

5           To recover on a strict liability design defect claim, the person injured by an  
6 allegedly defective product must establish that (1) the foreseeable risks of harm posed by  
7 the product's design could have been reduced or avoided by the adoption of a reasonable  
8 alternative design by the manufacturer and the omission of the alternative design renders  
9 the product not reasonably safe, (2) the defective condition rendered the product  
10 unreasonably dangerous to persons or property, (3) the defective condition existed at the  
11 time the product left the manufacturer's control, (4) the product reached the user or  
12 consumer without substantial change in the condition in which it was sold, and (5) the  
13 defective condition was a cause of Plaintiffs' damages. Wis. Stat. § 895.047; WIS JI-  
14 CIVIL 3260.1.

15           The consumer-contemplation test is used to determine elements (1) and (2) above.  
16 A product is said to be “defective” when it is in a condition not contemplated by the  
17 ordinary user or consumer which is unreasonably dangerous to the ordinary consumer.  
18 *Green v. Smith & Nephew AHP, Inc.*, 245 Wis.2d 772 (Wis. 2001). Wisconsin uses the  
19 “consumer contemplation” test for product-liability claims. *Green v. Smith & Nephew*  
20 *AHP, Inc.*, 245 Wis. 2d 772 (Wis. 2001); *In re Zimmer Nexgen Knee Implant Products*  
21 *Liab. Litig.*, 218 F. Supp. 3d 700, 723 (N.D. Ill. 2016), *aff'd sub nom. In re Zimmer,*  
22 *NexGen Knee Implant Products Liab. Litig.*, 884 F.3d 746 (7th Cir. 2018) (citing *Green v.*  
23 *Smith & Nephew AHP, Inc.*, 245 Wis. 2d 772, 826, 629 N.W.2d 727, 752 (2001)). Since  
24 the enactment of the Wis. Stat. §895.047 there is no law directly on point addressing the  
25 consumer expectation test, yet the Seventh Circuit interpreting Wisconsin law agreed that  
26 a consumer's expectation is at least a factor to consider. *In re Zimmer*, 218 F. Supp. 3d  
27 700, 723. Ill. 2016).

28

1                   d.     Damages:

2                   Intervening cause stemming from Mrs. Tinlin's treatment. *See Fouse v. Persons*,  
 3 259 N.W.2d 92, 95 (1977) (citing *Selleck v. Janesville*, 75 N.W. 975 (Wis. 1898)). If the  
 4 jury finds Bard negligent, "then the defense of intervening cause is unavailing unless the  
 5 court determines as a matter of law that there are policy factors which should relieve the  
 6 first actor from liability." *Stewart v. Wulf*, 271 N.W.2d 79, 86 (Wis. 1978). An intervening  
 7 act is a superseding cause only if "the conscience of the court would be shocked if the first  
 8 actor were not relieved from liability." *Rixmann v. Somerset Pub. Sch.*, 266 N.W.2d 326,  
 9 334 (Wis. 1978) (internal quotations and citation omitted).

10                  e.     Failure to Warn (Negligent and Strict Liability)<sup>3</sup>:

11                  To establish a failure to warn claim under Wisconsin law, "whether under a strict  
 12 liability or negligence theory, plaintiffs must establish four elements:

13                  '(1) existence of a duty to warn; (2) proof of a failure to warn adequately; (3) proof of  
 14 causation injury; and (4) actual damages resulted from the injury.'" *Below by Below v.*

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15                  <sup>3</sup> Wis. Stat. § 895.047(1) provides in relevant part: Liability of manufacturer. In an action  
 16 for damages caused by a manufactured product based on a claim of strict liability, a  
 17 manufacturer is liable to a claimant if the claimant establishes all of the following by a  
 preponderance of the evidence:

- 18                  (a) That the product is defective because it contains a  
                       manufacturing defect, is defective in design, or is defective  
                       because of inadequate instructions or warnings.... A product is  
                       defective because of inadequate instructions or warnings only  
                       if the foreseeable risks of harm posed by the product could  
                       have been reduced or avoided by the provision of reasonable  
                       instructions or warnings by the manufacturer and the omission  
                       of the instructions or warnings renders the product not  
                       reasonably safe.
- 23                  (b) That the defective condition rendered the product  
                       unreasonably dangerous to persons or property.
- 25                  (c) That the defective condition existed at the time the product  
                       left the control of the manufacturer.
- 26                  (d) That the product reached the user or consumer without  
                       substantial change in the condition in which it was sold.
- 28                  (e) That the defective condition was a cause of the claimant's  
                       damages.

1      *Yokohama Tire Corp.*, 13-cv-529, 2017 WL 570985, at \*2 (W.D. Wis. Feb. 13, 2017)  
 2      (quoting *Lemmerman v. Blue Cross Blue Shield of Wis.*, 713 F. Supp. 2d 791, 811 (E.D.  
 3      Wis. 2010)). *See also Forst v. SmithKline Beecham Corp.*, 602 F. Supp. 2d 960, 967 (E.D.  
 4      Wis. 2009) (failure to warn claim requires showing of breach of duty to warn, and that the  
 5      breach caused the plaintiff's injuries).

6            “A manufacturer has a duty to warn about dangers it knows or should know are  
 7      associated with its products.” *Below by Below*, 2017 WL 570985, at \*2 (citing  
 8      *Lemmerman*, 713 F. Supp. 2d at 811).

9            “The duty to warn arises when the manufacturer has, or should have, knowledge of  
 10     a dangerous use.” *Mohr v. St. Paul Fire & Marine Ins. Co.*, 674 N.W.2d 576, 589 (Wis.  
 11     App. 2003).

12           The application of the learned intermediary doctrine has not been decided by  
 13     Wisconsin appellate courts. This Court, collecting prior authority, held that “[t]he  
 14     Wisconsin Supreme Court has not decided whether to adopt the learned intermediary  
 15     doctrine, and federal courts applying Wisconsin law are split on the issue.” ECF  
 16     No. 12007, at 14 n.6. Another Court overseeing multidistrict litigation against Bard  
 17     regarding other medical devices has come to the same conclusion. *Rodenkirch-Kleindl v.*  
 18     *C.R. Bard, Inc.*, No. 2:13-CV-26026, 2016 WL 7116144, at \*3 (S.D. W. Va. Dec. 6,  
 19     2016). Other Courts have declined to apply the doctrine. “The court need not and will  
 20     not apply the ‘learned intermediary’ doctrine in this case. To echo our sister court in the  
 21     Western District of Wisconsin, ‘this court will not create Wisconsin law without some  
 22     indication that the state’s highest court would apply the doctrine if given the opportunity  
 23     to do so.’” *Forst v. SmithKline Beecham Corp.*, 602 F. Supp. 2d 960, 968 (E.D. Wis. 2009)  
 24     (citing *Peters v. AstraZeneca, LP*, 417 F. Supp. 2d 1051, 1054 (W.D. Wis. 2006)).

25           Unless no reasonable jury, properly instructed, could find negligence, the adequacy  
 26     of a warning is typically a jury question. *See Kurer v. Parke, Davis & Co.*, 679 N.W. 2d  
 27     867, 876 (Wis. App. 2004). Bard’s duty to warn is a continuing one, because it was both  
 28     practically and economically feasible for it to provide adequate warnings after the

1 Recovery filter reached the market . “[I]n order for a duty to warn, post-sale, to exist, the  
 2 plaintiff must have some evidence … that it was both practically and economically  
 3 feasible for the defendant to have provided warnings and that any warnings would have  
 4 been effective in reaching the users of its products.” *Bushmaker v. A. W. Chesterton Co.*,  
 5 09-cv-726, 2013 WL 11079371, at \*8 (W.D. Wis. Mar. 1, 2013).

6                   f.        Punitive Damages

7                   Plaintiffs’ Contention: Under Wisconsin law, punitive damages may be awarded in  
 8 addition to compensatory damages where the jury finds that the defendant acted  
 9 maliciously toward the plaintiffs or in an intentional disregard of the rights of the  
 10 plaintiffs. A defendant acts are malicious when they are the result of hatred, ill will, desire  
 11 for revenge, or inflicted under circumstances where insult to injury is intended. A  
 12 defendant acts in an intentional disregard of the rights of the plaintiffs if the defendant  
 13 acts with a purpose to disregard the plaintiffs’ rights or is aware that his or her acts are  
 14 substantially certain to result in the plaintiffs’ rights being disregarded. A defendant’s  
 15 conduct giving rise to punitive damages need not be directed at the specific Plaintiffs  
 16 seeking punitive damages in order to recover punitive damages and there is no  
 17 requirement that a defendant intended to cause harm or injury to the plaintiffs. *Strenke v.*  
 18 *Hogner*, 279 Wis. 2d 52, 58 (Wis. 2005); WIS JI-CIVIL 1707.2.

19                   A result or consequence is intentional if the defendant acts with a purpose to cause  
 20 the result or consequence or is aware that the result or consequence is substantially certain  
 21 to occur from the person’s conduct. The result or consequence here is the disregard of  
 22 rights. *Strenke*, 279 Wis. 2d at 69–70; WIS JI-CIVIL 1707.2

23                   A jury may find an intentional disregard of the plaintiffs’ rights if jurors are  
 24 satisfied that the defendant’s act or course of conduct was: (1) deliberate; (2) an actual  
 25 disregard of the plaintiffs’ right to safety, health, or life, a property right or some other  
 26 right; and (3) sufficiently aggravated to warrant punishment by punitive damages. WIS JI-  
 27 CIVIL 1707.2.

28

1           Defendants' Contention: Defendants disagree with Plaintiffs' analysis of  
 2 Wisconsin law on strict liability design defect. Defendants further disagree that the  
 3 appropriate test for product defect is the consumer expectations test. The appropriate test  
 4 is the risk benefit test under the Restatement Third as adopted by Wisconsin in 2011. As  
 5 to the strict liability and negligence claims. As to all issues, Defendants incorporate their  
 6 Trial Briefs addressing the issues under Wisconsin law (Dkt 16944 and 16946).

7           **E. LIST OF WITNESSES**

8           1. Each party understands that it is responsible for ensuring that the witnesses  
 9 it wishes to call to testify are subpoenaed. Each party further understands that any witness  
 10 a party wishes to call shall be listed on that party's list of witnesses; the party cannot rely  
 11 on the witness having been listed or subpoenaed by another party.

12          2. Many of the parties' summaries state that the witness will testify consistent  
 13 with his/her deposition. The parties do not waive any objections, and these descriptions  
 14 are subject to the prior rulings by the Court on motions *in limine* and deposition  
 15 designations previously submitted to the Court in the MDL and the pending motions *in*  
 16 *limine* and the pending motion for summary judgment filed in this case. Counsel agrees  
 17 that they and the witnesses will abide by those rulings.

18           **Plaintiffs' Witnesses**

- 19          1. Plaintiffs reserve the right to call witnesses for rebuttal as needed.  
 20          2. Witnesses who shall be called at trial (Live and/or by deposition):

21           **Fact Witnesses:**

22           Mrs. Debra Tinlin  
 23           c/o Beus Gilbert  
 24           701 N 44<sup>th</sup> Street  
 25           Phoenix, Arizona 85008

26 Mrs. Tinlin is the Plaintiff in this action. She will testify regarding her medical care and  
 27 treatment, as well as the surrounding and related circumstances; the nature, extent, and  
 28 severity of her injuries and suffering; the physical and mental pain, suffering and

1 discomfort associated with the injuries; and the impact of the injuries on her life,  
2 including without limitation the ongoing emotional and physical impact on her life.  
3 Lastly, she will testify consistent with her deposition given in this matter.

4 Mr. James Tinlin  
5 c/o Beus Gilbert  
6 701 N 44<sup>th</sup> Street  
Phoenix, Arizona 85008

7 Mr. Tinlin is the Plaintiff's husband. He will testify regarding his observations of  
8 Plaintiff's daily issues and injuries caused by her Filter and the failures of that filter, the  
9 overall impact of the injury on her daily activities and quality of life, and Plaintiff's  
10 mental and physical condition before and after the implant of her Filter. He will also  
11 testify consistent with his deposition in this matter.

12 Leah Nitke, D.O.  
13 2845 Greenbrier Road, Suite 120  
Green Bay, WI 54311

14 Dr. Nitke will testify regarding her examinations, care, treatment, observations and  
15 diagnosis of Plaintiff related to her IVC filter and resulting injuries and complications, as  
16 well as the nature and extent of injuries and complications caused by the failure of  
17 Plaintiff's Filter. Plaintiff further anticipates Dr. Nitke will testify consistent with her  
18 medical records and her deposition taken in this case.

19 Joshua Riebe, M.D.  
20 Green Bay Radiology  
21 2941 S Ridge Road  
Green Bay, WI 54304

22 Dr. Riebe will testify regarding his examinations, care, treatment, observations and  
23 diagnosis of Plaintiff related to her IVC filter and resulting injuries and complications, as  
24 well as the nature and extent of injuries and complications caused by the failure of  
25 Plaintiff's Filter. Plaintiff further anticipates Dr. Riebe will testify consistent with his  
26 medical records and his deposition taken in this case.

27  
28 Heather Stanko, M.D.

1                   Neurology Consultants of Bellin Health  
2                   725 S Webster Avenue, Suite 201  
3                   Green Bay, WI 54301

4                   Dr. Stanko will testify regarding her examinations, care, treatment, observations and  
5                   diagnosis of Plaintiff related to her IVC filter and resulting injuries and complications, as  
6                   well as the nature and extent of injuries and complications caused by the failure of  
7                   Plaintiff's Filter. Plaintiff further anticipates Dr. Stanko will testify consistent with her  
8                   medical records and her deposition taken in this case.

9                   Timothy Fisher  
10                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11                  Mr. Fisher was a territory and fields sales manager for Bard. Plaintiff expects that Mr.  
12                  Fischer has knowledge and would testify at trial regarding the information Bard provided  
13                  and did not provide to its sales force and to physicians relating to the IVC filters marketed  
14                  and sold to physicians and hospitals and specifically what information was provided to  
15                  him and to the sales representatives reporting to him regarding Bard's IVC filters and  
16                  what information they would and what could have conveyed to physicians who would use  
17                  those devices. Plaintiff expects that his testimony at trial will be consistent with the  
18                  testimony at his deposition taken on March 29, 2017, in this MDL

19                  Hugh Magee  
20                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

21                  Mr. Magee was a sales representative for Bard Peripheral Vascular Incorporated  
22                  ("BPV") at the time of and preceding the implantation of the filter in Plaintiff. Plaintiffs  
23                  expect that his testimony at trial will be consistent with his deposition taken on October  
24                  17, 2017, in the Bard IVC Filter MDL.

25  
26                  Shari Allen (O'Quinn)  
27                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

28                  Ms. Allen was the Regulatory Affairs Manager for BPV in 2004 and the Director of  
Regulatory Affairs and Clinical for BPV in 2005 and 2006. Plaintiff expects that she is

1 knowledgeable regarding the matters that were the subject of her employment with Bard  
2 and her depositions taken on November 2, 2010, in *Newton v. C.R. Bard, Inc., et al.*,  
3 Superior Court of Arizona, Maricopa County, Case No. CV2009-019232, and October 9,  
4 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego  
5 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

6 William Altonaga, M.D.  
7 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

8 Dr. Altonaga was a consultant to and acting Medical Director for C.R. Bard beginning in  
9 2001 and into 2004. Plaintiff expects that he is knowledgeable regarding the matters that  
10 were the subject of his employment with Bard and his deposition taken on October 22,  
11 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego  
12 County, East County Regional Center, Case No. 00069363-CU-PO-EC.

13 Murray R. Asch, M.D.  
14 c/o Lakeridge Health Corporation  
15 Director of Interventional Radiology  
580 Harwood Ave. S  
Oshawa, ON L1S 2J4

16 Dr. Asch is an Interventional Radiologist who was involved in a pilot study to assess the  
17 retrievability of the Recovery filter. Plaintiff expects that he is knowledgeable regarding  
18 the matters that were the subject of his study and work with Bard, as well as his  
19 depositions taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab. Litig.*, MDL No.  
20 2641, United States District Court, District of Arizona (“the Bard IVC Filter MDL”) and  
21 January 5, 2011, in *Lindsay, et al. v. C.R. Bard, Inc., et al.*, United States District Court,  
22 Southern District of New York, Case No. 1:09-cv-05475-SHS.

23 Robert M. Carr, Jr.  
24 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

25 Mr. Carr has been an employee at BPV since 2002; prior to that, he was an employee at  
26 NMT working on filters. At BPV, he was the Program Director for Research &  
27 Development from 2002 through 2010, Director Research & Development Biopsy from  
28 2010 through 2012, Senior Director Research & Development Biopsy & Imaging from

1 2013 through 2014, and Vice President International since 2015. Plaintiff expects that he  
2 is knowledgeable regarding the matters that were the subject of his employment with  
3 NMT and Bard and his depositions taken on March 18, 2016, and January 19, 2017, in the  
4 Bard IVC Filter MDL; May 8, 2007, in *Hutson v. C.R. Bard, Inc., et al.*, Commonwealth  
5 of Kentucky, McCracken Circuit Court, Division II, Case No. 06-CI-680; March 4, 2010,  
6 in *Campbell v. C.R. Bard, Inc.*, Commonwealth of Kentucky, Scott Circuit Court,  
7 Division I, Case No. 08-CI-00541; September 23, 2010, in *Vedas v. C.R. Bard, Inc., et al.*,  
8 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655; September 14,  
9 2012, in *Albrecht, et al. v. Bard Peripheral Vascular, Inc.*, Circuit Court of Greene  
10 County, Missouri, Case. No. 1031-cv10504; April 17, 2013, in *Bouldry, et al. v. C.R.*  
11 *Bard, Inc., et al.*, United States District Court, Southern District of Florida, Case No. 12-  
12 809-51-CIV-Rosenbaum; October 25, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United  
13 States District Court, Eastern District of New York, Case No. CV11-2632 (DRH);  
14 November 5, 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California,  
15 San Diego County, East County Regional Center, Case No. 00069363-CU-PO-EC;  
16 December 19, 2013, in *Payne v. C.R. Bard, Inc., et al.*, United States District Court,  
17 Middle District of Florida, Orlando Division, Case No. 6:11-cv-01582-Orl-37GJK;  
18 October 29, 2014, in *Tillman v. C.R. Bard, Inc.*, United States District Court, Middle  
19 District of Florida, Jacksonville, Case No. 3:13-cv-222-J-34-JBT; and December 19, 2014,  
20 in *Kilver v. C.R. Bard, Inc.*, United States District Court, Central District of Illinois, Case  
21 No. 1:13-cv-01219-MMM-JAG.

Andrzej Chanduskzko  
c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Chandskzko has been an employee of BPV since 2002; prior to that, he was an  
25 employee at NMT working on IVC filters. At BPV, he was a Senior Engineer, Research  
26 & Development Staff Engineer from 2004 through 2008, Staff Engineer from 2009  
27 through 2014, and Principal Engineer since 2015. Plaintiff expects that he is  
28 knowledgeable regarding the matters that were the subject of his employment with Bard

1 and NMT, as well as his depositions taken on September 22, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, June  
2 21, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District Court, Eastern  
3 District of New York, Case No. CV11- 2632 (DRH), October 10, 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-WGC, and April 23, 2015, in *Arnold, et al. v. C.R. Bard, Inc., et al.*, United States District  
4 Court, Northern District of Texas, Dallas Division, Case No. 5:13-cv-00609-HLH.  
5  
6  
7

8                   David Ciavarella, M.D.  
9                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

10 Dr. Ciavarella has been Vice President Corporate Clinical Affairs at C.R. Bard since 2004.  
11 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of  
12 his employment with Bard and depositions taken on March 1, 2011, and August 29, 2012,  
13 in *Tyson v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No.  
14 CV2010- 011149, November 12, 2013, in *Giordano v. C.R. Bard, Inc., et al.*, Superior  
15 Court of California, San Diego County, East County Regional Center, Case No.  
16 00069363-CU-PO-EC, and July 29, 2014, in *Coker v. C.R. Bard, Inc., et al.*, United States  
17 District Court, Northern District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

18                   Len DeCant  
19                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

20 Mr. DeCant was Vice President Research & Development for BPV from 2002 to 2007.  
21 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of  
22 his employment with Bard and his deposition taken on May 24, 2016, in the Bard IVC  
23 Filter MDL.

24                   David Dimmit  
25                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. Dimmit is the Vice President and Group Controller at C.R. Bard; Plaintiff expects that  
27 he is knowledgeable regarding matters that are/were subject to his employment with Bard  
28

1 and his deposition was taken on January 26, 2017 as to the defendants' financial status,  
2 assets, and net worth

3 Mehdi Syed  
4 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

5 Mr. Syed is the Vice President of Operations at Becton Dickinson and was designated by  
6 Bard to testify on the subject notices for the deposition relating to punitive damages and  
7 Bard's financial condition; Plaintiff expects that he is knowledgeable regarding matters  
8 that are/were subject to his employment with Bard and his deposition was taken on March  
9 2, 2018, as to Defendants' financial status, assets, and net worth.

10 Mary Edwards  
11 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

12 Ms. Edwards was Vice President Regulatory Affairs/Clinical Affairs at C.R. Bard from  
13 1999 to 2005. Plaintiff expects that she is knowledgeable regarding the matters that were  
14 the subject of her employment with Bard and her depositions taken on January 20, 2014,  
15 in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego County,  
16 East County Regional Center, Case No. 00069363-CU-PO-EC, and August 19, 2016, in  
17 the Bard IVC Filter MDL.

18 Robert Ferrara  
19 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

20 Mr. Ferrara was the Bard sales representative who called on and made presentations to  
21 Plaintiff's treating physicians during the relevant time period. Plaintiff expects Mr.  
22 Ferrara will testify on the subject matter of his employment at Bard, and consistent with  
23 his deposition given in this case.

24 Christopher Ganser  
25 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

26 Mr. Ganser was Vice President, Regulatory Science at C.R. Bard from 2005 through 2006  
27 and Vice President Quality, Environmental Services, & Safety from 2007 through 2010.  
28 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of

1 his employment with Bard and his depositions taken on February 28, 2011, in *Newton v.*  
2 *C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-  
3 019232, September 9, 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District  
4 Court, Eastern District of New York, Case No. CV11-2632 (DRH), and October 11, 2016,  
5 in the Bard IVC Filter MDL.

6                   David Mickey Graves  
7                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

8 Mr. Graves was an Engineer at BPV beginning in 2004 to at least 2014. Plaintiff expects  
9 that he is knowledgeable regarding the matters that were the subject of his employment  
10 with Bard and his deposition taken on February 27, 2014, in *Ocasio, et al. v. C.R. Bard,*  
11 *Inc., et al.*, United States District Court, Middle District of Florida, Tampa Division, Case  
12 No. 8:13-cv-01962-DSM-AEP.

13                   Janet Hudnall  
14                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

15 Ms. Hudnall was an employee at BPV from 1998 to 2008, and has recently become  
16 employed by Bard again; she held positions as Product Development Engineer, Product  
17 Manager, and Marketing Manager. Plaintiff expects that she is knowledgeable regarding  
18 the matters that were the subject of her employment with Bard and her depositions taken  
19 on November 3, 2010, in *Newton v. C.R. Bard, Inc., et al.*, Superior Court of Arizona,  
20 Maricopa County, Case No. CV2009-019232, and November 1, 2013, in *Phillips v. C.R.*  
21 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-  
22 WGC.

23                   Brian Hudson  
24                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

25 Mr. Hudson was an employee at BPV from 1999 to 2012; he held positions as Quality  
26 Engineer, Senior Risk Manager, and Associate Director Quality Assurance. Plaintiff  
27 expects that he is knowledgeable regarding the matters that were the subject of his  
28 employment with Bard and his depositions taken on January 21, 2011, in *Tyson v. C.R.*

1      *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2010-011149,  
2      and January 17, 2014, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California,  
3      San Diego County, East County Regional Center, Case No. 00069363-CU-PO-EC.

4                  Krishna Kandarpa, M.D.  
5                  National Institute of Health  
6                  Bethesda, MD 20892

7      Dr. Kandarpa was the Medical Monitor for Bard's EVEREST Retrievability Study.  
8      Plaintiff expects he is knowledgeable about and will provide testimony concerning the  
9      EVEREST Study and all documents related to the same, including his observations, his  
10     concerns and findings, complications and adverse events that occurred during the study,  
11     design and purpose of the study, his recommendations to and interactions with Bard and  
12     its representatives/agents based on the study, and all other related facts and circumstances.

13                  Sanjeeva Kalva, M.D.  
14                  c/o Beus Gilbert  
15                  701 N 44th Street  
16                  Phoenix, Arizona 85008

17      Dr. Kalva is an Interventional Radiologist and a key opinion leader on IVC filters.  
18      Plaintiff expects that he is knowledgeable regarding the matters that were the subject of  
19      his interactions with Bard, his experience with its filter, and deposition given in this  
20      litigation.

21                  Thomas Kinney, MD, MSME  
22                  c/o Beus Gilbert  
23                  701 N 44th Street  
24                  Phoenix, Arizona 85008

25      Dr. Kinney is an Interventional Radiologist. He is expected to testify about his experience  
26      with IVC filters and will testify consistent with his expert report and deposition given in  
27      this litigation. He is also disclosed as an expert, below.

28                  Bill Little  
29                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

30      Mr. Little was Vice President of Global Marketing at BPV from 2008 through 2011.  
31      Plaintiff expects that he is knowledgeable regarding the matters that were the subject of

1 his employment with Bard and his deposition taken on July 21, 2016, in the Bard IVC  
2 Filter MDL.

3                   Patrick MacDonald  
4                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

5 Mr. MacDonald is a sales representative and sales trainer at Bard. Plaintiff expects that he  
6 is knowledgeable regarding the matters that were the subject of his employment with Bard  
7 and his deposition taken on July 29, 2016, in Austin v. C.R. Bard, in 17<sup>th</sup> Judicial Circuit,  
8 Broward County Florida, Case No. 15-008373 and the Bard IVC Filter MDL

9                   Chad Modra  
10                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Mr. Modra was Director Quality Assurance and Vice President Quality Assurance at BPV  
12 from 2011 through 2014. Plaintiff expects that he is knowledgeable regarding the matters  
13 that were the subject of his employment with Bard and his depositions taken on March 28,  
14 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case  
15 No. 3:12-cv-00344-RCJWGC, June 6, 2014, in *Ocasio, et al. v. C.R. Bard, Inc., et al.*,  
16 United States District Court, Middle District of Florida, Tampa Division, Case No. 8:13-  
17 cv-01962-DSM-AEP, and December 15, 2015, and January 20, 2016, in the Bard IVC  
18 Filter MDL.

19                   Daniel Orms  
20                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

21 Mr. Orms was a sales representative and district manager at Bard from 1997 through 2012.  
22 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of  
23 his employment with Bard and his deposition taken on August 16, 2016, in Austin v. C.R.  
24 Bard, in 17<sup>th</sup> Judicial Circuit, Broward County Florida, Case No. 15-008373 and the Bard  
25 IVC Filter MDL.

26                   Frederick B. Rogers, M.D.  
27                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

28

1 Dr. Rogers was the author of a large study establishing that IVC filters do not reduce the  
2 rate of PE in trauma patients. Plaintiff further expects that he is knowledgeable regarding  
3 the matters that were the subject of his deposition taken on July 18, 2017, in *In re: Bard*  
4 *IVC Filters Products Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify  
5 consistent with that deposition. He is also disclosed as an expert, below.

6                   Gin Schulz  
7                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

8 Ms. Schulz was Vice Present Quality Assurance at BPV from 2005 to 2011 and in the  
9 Quality Assurance department at C.R. Bard since 2011, including as Vice President  
10 Quality Assurance. Plaintiff expects that she is knowledgeable regarding the matters that  
11 were the subject of her employment with Bard and her depositions taken on September 13,  
12 2013, in *Anderson v. C.R. Bard, Inc., et al.*, United States District Court, Eastern District  
13 of New York, Case No. CV11-2632 (DRH), and January 30, 2014, in *Phillips v. C.R.*  
14 *Bard, Inc.*, United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-  
15 WGC.

16                   Carol Vierling  
17                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Ms. Vierling was the Director, Regulatory Affairs at BPV from 1994 through 2002.  
19 Plaintiff expects that she is knowledgeable regarding the matters that were the subject of  
20 her employment with Bard and her deposition taken on May 11, 2016, in the Bard IVC  
21 Filter MDL.

22                   Alison Walsh  
23                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Ms. Walsh was a sales representative at Bard from 2003 through 2006. Plaintiff expects  
25 that she is knowledgeable regarding the matters that were the subject of her employment  
26 with Bard and her deposition taken on January 23, 2014, in the *Phillips v. C.R. Bard, Inc.*,  
27 United States District Court, District of Nevada, Case No. 3:12-cv-00344-RCJ-WGC

28                   Steve Williamson

1 c/o Counsel for Bard Peripheral Vascular and C.R. Bard  
2

3 Mr. Williamson has been President at BPV since 2012. Plaintiff expects that he is  
4 knowledgeable regarding the matters that were the subject of his employment with Bard  
5 and his deposition taken on September 7, 2016, in the Bard IVC Filter MDL.

6 Natalie Wong  
7 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

8 Ms. Wong has been an employee of BPV since 2004; she has held positions as Quality  
9 Engineer, Field Assurance Quality Engineering Manager, Quality Engineering Manager,  
10 and Senior Quality Engineer, New Product Development. Plaintiff expects that she is  
11 knowledgeable regarding the matters that were the subject of her employment with Bard  
12 and her depositions taken on September 21, 2010, in *Velas v. C.R. Bard, Inc., et al.*,  
13 Superior Court of Arizona, Maricopa County, Case No. CV2010-019655, and October 18,  
14 2016, in the Bard IVC Filter MDL.

15 John Worland, M.D.  
16 21605 Crestone Needles Drive  
17 Parker, Colorado 80138

18 Mr. Worland is an interventional radiologist in Aurora, Colorado at the Medical Center of  
19 Aurora. Plaintiff expects that he is knowledgeable regarding his experience with IVC  
20 filters and subject matters discussed at his deposition taken on March 16, 2011, in  
*Bloomquist v. C.R. Bard, et al.* in United States District Court, Western District of  
Missouri, Case. No. 09-CV-5086-SW-RED.

21 **Expert Witnesses:**

22 Rebecca Betensky, Ph.D.  
23 655 Huntington Avenue  
24 Building II, Room 421  
Boston, MA 01225

25 Dr. Betensky is a biostatistician. Dr. Betensky is expected to testify about her analysis  
26 and data relating to complication rates of Bard's defective IVC filter, various design  
27 failure modes effects analysis documents, and about various filter migration test results.  
28 Dr. Betensky will testify consistent with her deposition and expert report. Further, Dr.

1 Betensky will testify about the foundation and bases for her opinions, including her  
2 review of medical and scientific literature, Bard documents, and other information she has  
3 reviewed and relied upon. Dr. Betensky will also respond to opinions and testimony of  
4 defense experts.

5 Darren R. Hurst, M.D.  
6 c/o Beus Gilbert  
7 701 N 44th Street  
Phoenix, Arizona 85008

8 Dr. Hurst is Plaintiff's vascular and interventional radiologist expert. Dr. Hurst is  
9 expected to testify as to the Defendants' liability and the design problems associated with  
10 the IVC filter, causation, and damages. Dr. Hurst will testify consistent with his  
11 deposition and expert report in this case. Further, Dr. Hurst will testify about the  
12 foundation and bases for his opinions, including his review of medical and scientific  
13 literature, Bard documents, and other information he has reviewed and relied upon.  
14 Dr. Hurst will also provide foundational testimony for Plaintiff's medical illustrations and  
15 animations. Dr. Hurst will also respond to opinions and testimony of defense experts.

16 David A. Kessler, M.D.  
17 c/o Beus Gilbert  
18 701 N 44th Street  
Phoenix, Arizona 85008

19 Dr. Kessler is a medical doctor and former FDA commissioner. Dr. Kessler is expected to  
20 testify consistent with his expert report and depositions. Further, Dr. Kessler will testify  
21 about the foundation and bases for his opinions, including his review of medical and  
22 scientific literature, Bard documents, and other information he has reviewed and relied  
23 upon. Plaintiff also anticipates that Dr. Kessler will also respond to opinions and  
testimony of defense experts.

24 Suzanne Parisian, M.D.  
25 MD Assist, Inc.  
26 7117 N. 3<sup>rd</sup> St.  
Phoenix, AZ 85020

27 Dr. Parisian is a medical doctor and former FDA employee. Dr. Parisian is expected to  
28 testify consistent with her expert report and depositions. Further, Dr. Parisian will testify

1 about the foundation and bases for her opinions, including his review of medical and  
2 scientific literature, Bard documents, and other information she has reviewed and relied  
3 upon. Plaintiff also anticipates that Dr. Parisian will also respond to opinions and  
4 testimony of defense experts.

5 Thomas Kinney, MD, MSME  
6 c/o Beus Gilbert  
7 701 N 44th Street  
Phoenix, Arizona 85008

8 Dr. Kinney is an interventional radiology expert for Plaintiff. Dr. Kinney is expected to  
9 testify about the general liability of the Bard defendants. Dr. Kinney will further testify  
10 consistent with his deposition and expert report in this litigation. Further, Dr. Kinney will  
11 testify about the foundation and bases for his opinions, including his review of medical  
12 and scientific literature, Bard documents, and other information he has reviewed and  
13 relied upon. Dr. Kinney will also respond to opinions and testimony of defense experts.

14 Robert McMeeking, Ph.D.  
15 c/o Beus Gilbert  
701 N 44<sup>th</sup> Street  
Phoenix, Arizona 85008

16 Dr. McMeeking is a materials and mechanical engineer and is experienced in safety,  
17 reliability and effectiveness of biomedical implant devices. Dr. McMeeking is expected  
18 to testify that the design of the Recovery filter is inherently dangerous and prone to  
19 numerous failure modes. There are safer alternative designs which were available to  
20 Defendants. Dr. McMeeking is expected to testify and describe alternative designs of  
21 IVC filters including the Simon Nitinol filter, which are feasible and reduce the tendency  
22 to tilt, perforate, migrate, fracture and otherwise fail.

23 Dr. McMeeking is expected to testify about his analyses and calculations which  
24 predict stress, strain, and strength of the Bard Recovery vena cava filter. He will explain  
25 why the filter testing conducted by Defendants was inadequate and misleading. Further,  
26 Dr. McMeeking will testify about the foundation and bases for his opinions, including his  
27 review of medical and scientific literature, Bard documents, and other information he has  
28 reviewed and relied upon. Dr. McMeeking is also expected to testify about the following:

- 1       • The Recovery filter has a design that makes it prone to migration, tilting and  
2           perforation/penetration through the vena cava.
- 3       • The driving force for tilting is the relaxation of strain energy in the filter.
- 4       • Tilting allows arms and legs to spread out, thereby reducing the strain and  
5           strain energy in the filter.
- 6       • The filter design makes it probable that limbs will perforate into the wall of  
7           the vena cava.
- 8       • Pressure applied from the arms and legs of the filter provide the driving  
9           forces that lead to penetration in the vena cava walls.
- 10      • The filter design causes increased pressure from the arms and legs against  
11           the vena cava wall.
- 12      • The relatively sharp ends of some arms and legs of the IVC filter can press  
13           aggressively into the vena cava wall thereby contributing to higher pressure  
14           to the vena cava wall when the filter becomes severely tilted.
- 15      • A severely tilted filter will likely perforate the vena cava wall.
- 16      • The association between failure modes found with Bard filters.

17 Dr. McMeeking may also respond to opinions and testimony of defense experts. In  
18 addition, Plaintiff anticipates that Dr. McMeeking will testify consistent with his expert  
19 reports and depositions given to date.

20           Mark Moritz, M.D.  
21           c/o Counsel for Bard Peripheral Vascular and C.R. Bard

22 Dr. Moritz gave general expert opinions on behalf of Bard in the MDL, as well as case  
23 specific opinions in at least one of the MDL bellwethers. Plaintiff expects that he is  
24 knowledgeable regarding the matters that were the subject of his deposition taken on July  
25 18, 2017, in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-  
26 PHX-DGC, and will testify consistent with that deposition.

27           Derek David Muehrcke, M.D.  
28           c/o Beus Gilbert  
          701 N 44th Street  
          Phoenix, Arizona 85008

1 Dr. Muehrcke is a cardiothoracic and vascular surgeon. Dr. Muehrcke is expected to  
2 testify about the liability of the Bard defendants as well as causation and damages caused  
3 by the defective IVC filter. Dr. Muehrcke will testify consistent with his deposition and  
4 expert report in this case. Further, Dr. Muehrcke will testify about the foundation and  
5 bases for his opinions, including his review of medical and scientific literature, Bard  
6 documents, and other information he has reviewed and relied upon. Dr. Muehrcke will  
7 also provide foundational testimony for Plaintiff's medical illustrations and animations.  
8 Dr. Muehrcke will also respond to opinions and testimony of defense experts.

9                   Frederick B. Rogers, M.D.  
10                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Dr. Rogers gave general expert opinions on behalf of Bard in the MDL, as well as case  
12 specific opinions in at least one of the MDL bellwethers. He was the author of a large  
13 study establishing that IVC filters do not reduce the rate of PE in trauma patients.  
14 Plaintiff further expects that he is knowledgeable regarding the matters that were the  
15 subject of his deposition taken on July 18, 2017, in *In re: Bard IVC Filters Products*  
16 *Liability Litigation*, No. MD-15-02641-PHX-DGC, and will testify consistent with that  
17 deposition.

18                   J. Matthew Sims, MC, MS  
19                   c/o Beus Gilbert  
20                   701 N 44th Street  
21                   Phoenix, Arizona 85008

22 Mr. Sims is a Vocational Economist expert for the Plaintiff. He will provide testimony  
23 and opinion as to the present value of the life care plan for Plaintiff and projection of costs  
24 prepared by Plaintiff's Medical Services Consultant and Life Care Planner expert, Lora  
25 White. He will testify consistent with his expert report and deposition given in this case.

26                   Moni Stein, MD  
27                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

28 Dr. Stein gave general expert opinions on behalf of Bard in the MDL, as well as case  
specific opinions in at least one of the MDL bellwethers. Plaintiff expects that he is

1 knowledgeable regarding the matters that were the subject of his deposition taken on July  
2 31, 2017 in *In re: Bard IVC Filters Products Liability Litigation*, No. MD-15-02641-  
3 PHX-DGC, and will testify consistent with that deposition.

4 Michael Streiff, M.D.  
5 c/o Beus Gilbert  
6 701 N 44th Street  
Phoenix, Arizona 85008

7 Dr. Streiff is a hematology expert for Plaintiff. Dr. Streiff is expected to testify about the  
8 general liability of the Bard defendants, including without limitation the risk versus  
9 benefit analysis associated with the use of IVC filters. Dr. Streiff will further testify  
10 consistent with his deposition and expert report in this litigation. Further, Dr. Streiff will  
11 testify about the foundation and bases for his opinions, including his review of medical  
12 and scientific literature, medical and scientific literature he has authored and the  
13 associated research, Bard documents, and other information he has reviewed and relied  
14 upon. Dr. Streiff will also respond to opinions and testimony of defense experts.

15 Lora K. White, RNBC, BSN, CCM, CNLCP  
16 c/o Beus Gilbert  
17 701 N 44th Street  
Phoenix, Arizona 85008

18 Ms. White is a Medical Services Consultant and Life Care Planner expert for the Plaintiff.  
19 She prepared a life care plan for Plaintiff and projection of costs for the same arising from  
20 the injuries and damages caused by the failure of Plaintiff's Bard Filter. She will testify  
21 consistent with her expert report and deposition given in this case.

22       **3. Witnesses who may be called at trial (Live and/or by deposition):**

23           Brett Baird  
24           c/o Counsel for Bard Peripheral Vascular and C.R. Bard

25 Mr. Baird was a Senior Product Manager for BPV in 2007 and a Marketing Manager for  
26 BPV from 2008 through 2011. Plaintiff expects that he is knowledgeable regarding the  
27

28

1 matters that were the subject of his employment with Bard and his deposition taken on  
2 June 9, 2016, in the Bard IVC Filter MDL.

3 Brian Barry  
4 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

5 Mr. Barry was the Vice President Regulatory/Clinical Affairs for Bard Access Systems  
6 from 1994 through 1997, Vice President Corporate Regulatory Affairs for C.R. Bard from  
7 1997 through 2000, and Vice President of Regulatory Affairs and Clinical Affairs for C.R.  
8 Bard from 2003 to 2007. Plaintiff expects that he is knowledgeable regarding the matters  
9 that were the subject of his employment with Bard and his deposition taken on January 31,  
10 2014, in *Jones v. C.R. Bard, Inc.*, United States District Court, Northern District of Texas,  
11 Dallas Division, Case No. 3:13-cv-00599-K.

12 Kevin Boyle  
13 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

14 Mr. Boyle was Vice President of Research & Development at BPV from 2013 through  
15 2015. Plaintiff expects that he is knowledgeable regarding the matters that were the  
16 subject of his employment with Bard and his deposition taken on February 2, 2017, in the  
17 Bard IVC Filter MDL.

18 Gary S. Cohen, M.D.  
19 Temple University  
20 Medicine Education and Research Building (MERB)  
3500 N. Broad Street  
Philadelphia, PA 19140

21 Dr. Cohen is an Interventional Radiologist at Temple University Hospital. He was a  
22 consultant and key opinion leader for Bard on IVC filters. Plaintiff expects that he is  
23 knowledgeable regarding the matters that were the subject of his deposition taken on  
24 January 25, 2017, in the Bard IVC Filter MDL.

25 Robert Cortelezzi  
26 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

27 Mr. Cortelezzi was an employee at BPV from approximately 1990 to 2008; he was a  
28 Regional Manager from 2004 through 2008. Plaintiff expects that he is knowledgeable

1       regarding the matters that were the subject of his employment with Bard and his  
2       deposition taken on November 11, 2016, in the Bard IVC Filter MDL.

3                     Thomas Ferari  
4                     c/o Counsel for Bard Peripheral Vascular and C.R. Bard

5       Mr. Ferari was an Engineer at BPV. Plaintiff expects that he is knowledgeable regarding  
6       the matters that were the subject of his employment with Bard and his depositions taken  
7       on October 20, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of Arizona,  
8       Maricopa County, Case No. CV2010- 019655, and all related cross-noticed cases and  
9       April 2, 2014, in *Coker v. C.R. Bard, Inc., et al.*, United States District Court, Northern  
10      District of Georgia, Atlanta Division, Case No. 1:13-cv-0515.

11                     Kay Fuller  
12                     308 Meadowlark Rd  
13                     Santa Ynez, CA 93460

14       Ms. Fuller was Senior Regulatory Specialist at BPV from 1999 through 2004. Plaintiff  
15       expects that she is knowledgeable regarding the matters that were the subject of her  
16       employment with Bard and her depositions taken on November 9, 2010, in *Newton v. C.R.*  
17       *Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No. CV2009-019232,  
18       and January 11, 2016, in the Bard IVC Filter MDL.

19                     Brooke Gillette  
20                     c/o Counsel for Bard Peripheral Vascular and C.R. Bard

21       Ms. Gillette was sales representative at C.R. Bard from 2003 through 2006. Plaintiff  
22       expects that she is knowledgeable regarding the matters that were the subject of her  
23       employment with Bard and her deposition taken on July 11, 2014, in the *Rackliff v. C.R.*  
24       *Bard, et al.*, Superior Court of Arizona, Maricopa County, Case no. CV2011-021206.

25                     Holly Glass  
26                     c/o Counsel for Bard Peripheral Vascular and C.R. Bard

27       Ms. Glass was Vice President Government & Public Relations at C.R. Bard from 2002  
28       through 2009. Plaintiff expects that she is knowledgeable regarding the matters that were  
29       the subject of her employment with Bard and her deposition taken on September 23, 2016,  
30       in the Bard IVC Filter MDL.

1                   Jason Greer  
2                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3                   Mr. Greer was a Sales Representative and then District Manager at BPV from 1999  
4                   through 2007. Plaintiff expects that he is knowledgeable regarding the matters that were  
5                   the subject of his employment with Bard and his depositions taken on June 20, 2010, in  
6                   *Newton v. C.R. Bard, Inc., et al.*, Superior Court of Arizona, Maricopa County, Case No.  
7                   CV2009-019232, October 22, 2010, in *Vedas v. C.R. Bard, Inc., et al.*, Superior Court of  
8                   Arizona, Maricopa County, Case No. CV2010-019655, August 11, 2014, in *Barkley, et al.*  
9                   *v. C.R. Bard, Inc., et al.*, Arizona Superior Court, Maricopa County, Case No. CV2011-  
10                  021250, and September 26, 2011, in *Tyson v. C.R. Bard, Inc., et al.*, Superior Court of  
11                  Arizona, Maricopa County, Case No. CV2010-011149.

12                  John Lehman, M.D.  
13                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

14                  Dr. Lehman was Group Medical Director and Vice President of Medical Affairs for C.R.  
15                  Bard from 1991 to 1995; he was a consultant and acting Medical Director for C.R. Bard in  
16                  2003 and 2004. Plaintiff expects that he is knowledgeable regarding the matters that were  
17                  the subject of his employment with Bard and his depositions taken on April 2, 2013, in  
18                  *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case No.  
19                  3:12-cv-00344-RCJ-WGC, and all related cross-noticed cases and August 7, 2014, in  
20                  *Coker v. C.R. Bard, Inc., et al.*, United States District Court, Northern District of Georgia,  
21                  Atlanta Division, Case No. 1:13-cv-0515.

22                  Frank Lynch, M.D.  
23                  Penn State College of Medicine  
24                  500 University Drive  
25                  Hershey PA 17033

26                  Dr. Lynch is an Interventional Radiologist at Penn State Hospital. He was a consultant and  
27                  key opinion leader for Bard on IVC filters. Plaintiff expects that he is knowledgeable  
28                  regarding the matters that were the subject of his relationship with Bard and his deposition  
                      taken on January 30, 2017, in the Bard IVC Filter MDL.

1                   John McDermott  
2                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3                   Mr. McDermott was President of BPV from 1996 through 2006. Plaintiff expects that he  
4                   is knowledgeable regarding the matters that were the subject of his employment with Bard  
5                   and his depositions taken on November 1, 2010, in *Tyson v. C.R. Bard, Inc., et al.*,  
6                   Superior Court of Arizona, Maricopa County, Case No. CV2010-011149, and February 5,  
7                   2014, in *Giordano v. C.R. Bard, Inc., et al.*, Superior Court of California, San Diego  
8                   County, East County Regional Center, Case No. 00069363-CU-PO-EC.

9                   Abithal Raji-Kubba  
10                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11                  Ms. Raji-Kubba was Vice President Research & Development at BPV from 2007 through  
12                  2010 and Vice President Lutonix Technology Center from 2011 through 2012. Plaintiff  
13                  expects that she is knowledgeable regarding the matters that were the subject of her  
14                  employment with Bard and her deposition taken on July 18, 2016, in the Bard IVC Filter  
15                  MDL.

16                  Michael Randall  
17                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18                  Mr. Randall has been an employee of BPV in the Research & Development department  
19                  since 2006; he has held several positions, including Engineer, Program Manager,  
20                  Associate Director, and Director. Plaintiff expects that he is knowledgeable regarding the  
21                  matters that were the subject of his employment with Bard and his depositions taken on  
22                  January 18, 2017, and February 2, 2017, in the Bard IVC Filter MDL.

23                  Kim Romney  
24                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

25                  Ms. Romney has been an employee of BPV since 2011 and is presently a Senior Product  
26                  Manager for Ports and Filters. Plaintiff expects that she is knowledgeable regarding the  
27                  matters that were the subject of her employment with Bard and her depositions taken on  
28                  August 30, 2016, September 7, 2016, and January 18, 2017, in the Bard IVC Filter MDL.

1                   Jack Sullivan  
2                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

3                   Mr. Sullivan was an employee at BPV from 1994 to 2013; he was in the Sales department  
4                   and held positions including District Manager and Regional Manager. Plaintiff expects  
5                   that he is knowledgeable regarding the matters that were the subject of his employment  
6                   with Bard and his depositions taken on September 16, 2016, and November 3, 2016, in the  
7                   Bard IVC Filter MDL.

8                   Alex Tessmer  
9                   c/o Counsel for Bard Peripheral Vascular and C.R. Bard

10                  Mr. Tessmer was an employee and engineer at BPV in the Research & Development  
11                  department from 1997 through 2004. Plaintiff expects that he is knowledgeable regarding  
12                  the matters that were the subject of his employment with Bard and his deposition taken on  
13                  June 12, 2013, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of  
14                  Nevada, Case No. 3:12-cv-00344-RCJ-WGC.

15                  Doug Uelmen  
16                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

17                  Mr. Uelmen was an employee at C.R. Bard and then BPV from approximately 1981  
18                  through 2005; he was Vice President Quality Assurance at BPV from 2003 through 2005.  
19                  Plaintiff expects that he is knowledgeable regarding the matters that were the subject of  
20                  his employment with Bard and his depositions taken on October 4, 2013, in *Giordano v.*  
21                  *C.R. Bard, Inc., et al.*, Superior Court of California, San Diego County, East County  
22                  Regional Center, Case No. 00069363-CU-PO-EC, and May 13, 2014, in *Coker v. C.R.*  
23                  *Bard, Inc., et al.*, United States District Court, Northern District of Georgia, Atlanta  
24                  Division, Case No. 1:13-cv-0515.

25                  John Van Vleet  
26                  c/o Counsel for Bard Peripheral Vascular and C.R. Bard

27                  Mr. Van Vleet has been the Vice President Regulatory Affairs/Clinical Affairs at BPV

1 since 2007. Plaintiff expects that he is knowledgeable regarding the matters that were the  
2 subject of his employment with Bard and his depositions taken on September 29, 2016,  
3 and January 17, 2017, in the Bard IVC Filter MDL.

4 Bryan Vogel  
5 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

6 Mr. Vogel has been a Clinical Specialist II for Bard since 2012. Plaintiff expects that he  
7 is knowledgeable regarding the matters that were the subject of his employment with Bard  
8 and his deposition taken on August 15, 2017, in the Bard IVC Filter MDL.

9 John Weiland  
10 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

11 Mr. Weiland has been the President and Chief Operating Officer of C.R. Bard throughout  
12 the relevant time period. Plaintiff expects that he is knowledgeable regarding the matters  
13 that were the subject of his employment with Bard and his deposition taken on April 23,  
14 2014, in *Phillips v. C.R. Bard, Inc.*, United States District Court, District of Nevada, Case  
15 No. 3:12-cv-00344-RCJWGC.

16 John Wheeler  
17 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

18 Mr. Wheeler has been employed in the Quality Assurance department at BPV since 2012.  
19 Plaintiff expects that he is knowledgeable regarding the matters that were the subject of  
20 his employment with Bard and his deposition taken on July 29, 2016, in the Bard IVC  
21 Filter MDL.

22 Mark Wilson  
23 c/o Counsel for Bard Peripheral Vascular and C.R. Bard

24 Mr. Wilson worked in the Sales department at BPV from 2006 through 2010 as a sales  
25 training manager. Plaintiff expects that he is knowledgeable regarding the matters that  
26 were the subject of his employment with Bard and the deposition taken on January 31,  
27 2017, in the Bard IVC Filter MDL.

28 **4. Any witness identified by Defendants.**

1                   **Defendants' Witnesses:**

2                   Because of the time limits, Defendants request that the following issues be  
 3 addressed during the Pretrial Conference. The parties have met and conferred on these  
 4 issues and, as set forth above, Plaintiffs do not believe these issues are appropriate for  
 5 inclusion in this pretrial order:

6                   1.       Plaintiffs have indicated that they intend to play the depositions of certain of  
 7 Defendants' expert witnesses who Defendants do not intend to call during this trial.  
 8 Defendants request the same ruling as the Court made in the previous trials that while  
 9 Plaintiffs may use portions of the depositions, "they may not disclose through argument or  
 10 deposition excerpts that the experts were originally retained by Defendants." (Dkt 10382,  
 11 Page 3:22-26). And further that before a deposition of a Bard expert may be played that  
 12 "there should be some showing ... that no other expert of similar qualifications is  
 13 available, or that the unavailable expert has some unique testimony to contribute." (*Id.*,  
 14 Page 4:104).

15                  2.       Plaintiffs list two regulatory experts (Dr. Kessler and Dr. Parisian).  
 16 Defendants request that Plaintiffs identify which one they intend to call.

17                  3.       Plaintiffs have listed Dr. Kinney as both a fact and an expert witness, and  
 18 state that they intend to call him to testify about his consulting work for Bard. Defendants  
 19 object to Dr. Kinney testifying as a fact witness and refers to the Court's Order granting  
 20 Defendants' Motion *in Limine* on this topic. (Dkt. 10075 at page 2). "Plaintiffs may not  
 21 question Dr. Kinney about his prior work for Bard, and should instruct him not to mention  
 22 it in his testimony." (*Id.* At page 3:3-4).

23                  4.       Plaintiffs have identified multiple interventional radiologists as experts  
 24 witnesses they intend to call as expert witnesses (including three named by Defendants in  
 25 other cases, two of whom Defendants withdrew). Defendants object to this as cumulative,  
 26 and ask Plaintiffs to identify who they intend to call.

27                  5.       Given the large number of witnesses who have been listed as possible trial  
 28 witnesses including Bard employees and former who have been subpoenaed by Plaintiffs,

1 and for whom Bard has accepted subpoenas, and for the efficiency of the trial under the  
2 time limits, Defendants request that, as the Court directed and parties agreed in the  
3 previous MDL trials, the parties provide each other with the names of witnesses who will  
4 be called live at least 48 hours in advance of the witness being called.

5 **DEFENDANTS' WITNESSES:**

6 Defendants' witnesses who shall be called at trial (either live or by deposition):

7 **Robert Carr**

8 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
9 Fact Witness

10 **Subject Matter:** Mr. Carr is currently Vice President of International at BPV. He  
11 previously held the title of Senior Director of Research and Development at BPV, with  
12 responsibility for IVC filters. Mr. Carr may provide testimony regarding biomedical and  
13 biomechanical engineering generally, as well as testimony regarding the design,  
14 development, manufacture, testing, clearance, evolution, and use of Bard filters,  
15 specifically. Mr. Carr may also provide testimony that was the subject of his previous  
16 testimony or the subject of declarations/affidavits he has submitted in this action.

17 **Andre Chanduszko**

18 May be contacted c/o Nelson Mullins  
Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
19 Fact Witness

20 **Subject Matter:** Mr. Chanduszko is an employee of BPV working as a staff engineer  
21 with responsibilities related to the design, development, and testing of IVC filters.  
22 Mr. Chanduszko may provide testimony regarding biomedical and biomechanical  
23 engineering generally, as well as testimony regarding the design, development,  
24 manufacture, testing, clearance, evolution, and use of Bard filters, specifically.  
25 Mr. Chanduszko may also provide testimony that was the subject of previous disclosures  
26 or his previous testimony.

27 **Chad Modra**

28 May be contacted c/o Nelson Mullins Riley & Scarborough

1 LLP  
2 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
3 404-322-6000  
Fact Witness

4 **Subject Matter:** Mr. Modra was formerly Vice President of Quality Assurance at BPV,  
5 and is currently Staff Vice President of Operations at C. R. Bard, Inc. Mr. Modra may  
6 testify regarding any and all aspects of Bard's quality assurance processes that are in place  
7 or that have been in place for Bard's retrievable IVC filters. Mr. Modra may testify  
8 regarding Bard's processes and procedures for addressing complaints, including complaint  
9 handling, investigations, and MDR reporting for its IVC filters. He may also testify to  
10 certain communications and inspections/audits with FDA. To the extent that evidence  
11 related to the FDA Warning and 483 Letters is admitted, Mr. Modra may offer testimony  
12 regarding the same. Mr. Modra may also provide testimony that was the subject of his  
13 previous testimony or the subject of declarations/affidavits he has submitted in this action.

14 **Christopher S. Morris, M.D.**

15 Department of Radiology  
The University of Vermont Medical Center  
16 111 Colchester Avenue  
Burlington, VT 05401  
802-847-8359  
17 Expert Witness

18 **Subject Matter:** Dr. Morris is a medical doctor and is a Fellow of the Society of  
19 Interventional Radiology. He is certified in Radiology and holds a Certificate of Added  
20 Qualifications in Vascular and Interventional Radiology. Dr. Morris is a Professor of  
21 Radiology and Surgery at the College of Medicine at the University of Vermont.  
22 Dr. Morris may provide expert testimony about the historical use, risks, and benefits of  
23 IVC filters; the health conditions that IVC filters are used to treat; alternate treatments for  
24 DVT and Pulmonary Embolism; and the medical literature related to IVC filters.  
25 Dr. Morris will also testify regarding his personal experience placing and retrieving IVC  
26 filters, including Bard IVC filters, and specifically that Bard retrievable filters are safe and  
27 effective. He may respond to assumptions, opinions, and testimony offered by various  
28 Plaintiffs' experts as they relate to the same. Dr. Morris also may provide expert

1 testimony about Plaintiffs' medical treatment and her IVC filter. Dr. Morris is expected to  
2 offer opinions and testify consistent with his expert report(s) served in the MDL, and in  
3 this case, and his previous deposition and trial testimony.

4 Witnesses who may be called at trial (either live, by deposition or prior testimony):

5 **Murray Asch**  
6 c/o Lakeridge Health Corporation  
7 Director of Interventional Radiology  
580 Harwood Ave. S  
Oshawa, ON L1S 2J4

8 **Subject Matter:** Dr. Asch is an Interventional Radiologist who was involved in a pilot  
9 study to assess the retrievability of the Recovery filter. Defendants expect that he is  
10 knowledgeable regarding the matters that were the subject of his study and work with  
11 Bard, as well as his deposition taken on May 2, 2016, in *In re Bard IVC Filters Prod. Liab.*  
12 *Litig.*, MDL No. 2641, United States District Court, District of Arizona ("the Bard IVC  
13 Filter MDL") and his trial testimony in *Booker v. Bard* and *Jones v. Bard*, United States  
14 District Court, District of Arizona

15 **Brain Barry**  
16 May be contacted c/o Nelson Mullins Riley & Scarborough  
17 LLP  
18 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

19 **Subject Matter:** Mr. Barry is a former employee of C. R. Bard. He may testify  
20 regarding the matters that were the subject of his employment with Bard and his  
21 deposition.

22 **Kevin Boyle**  
23 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
24 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

25 **Subject Matter:** Mr. Boyle is currently the Vice President of Research and Development  
26 for BPV. Mr. Boyle may testify about BPV's policies and procedures in place for its  
27 research and development of its products, including IVC filters. He may testify regarding  
28

1 the testing, development, and design of Bard's IVC filters. He may also provide testimony  
2 that was the subject of his previous deposition testimony.

3           **Paul Briant, Ph.D., P.E.**

4           **Exponent**  
5           149 Commonwealth Drive  
6           Menlo Park, CA 94025  
7           650-326-9400  
8           Expert Witness

9  
10          **Subject Matter:** Dr. Briant is a mechanical engineer who specializes in mechanical  
11 engineering, solid mechanics, and finite element analysis (FEA) of structures, including  
12 medical devices. He is a Principal Engineer with Exponent Failure Analysis Associates.  
13 Dr. Briant may provide expert testimony on mechanical engineering, solid mechanics, and  
14 finite element analysis (FEA). He may respond to assumptions, opinions, and testimony  
offered by Plaintiffs' expert Dr. McMeeking. Dr. Briant is expected to offer opinions and  
testify consistent with his expert report(s) served in the MDL, and his previous deposition  
and trial testimony.

15           **David Ciavarella, M.D.**

16           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
17           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
18           404-322-6000  
19           Fact Witness

20          **Subject Matter:** Dr. Ciavarella is an employee of C. R. Bard, Inc. He is currently Vice  
21 President, Corporate Clinical Affairs at Bard, and he has held that title since he began  
22 working for C. R. Bard in 2004. Dr. Ciavarella may testify concerning any and all aspects  
23 of Bard's clinical affairs policies, procedures, and practices that are, or have been, in place  
with respect to Bard's IVC filters. Dr. Ciavarella may also provide testimony that was the  
subject of his previous deposition testimony.

24          Based on reports received by Bard, Dr. Ciavarella may also testify concerning the  
25 rates of complications with Bard's IVC filters and analyses performed by Bard regarding  
26 adverse event rates. Dr. Ciavarella may also testify that the complication rates reported to  
27 Bard remain below the guidelines established by the Society of Interventional  
28 Radiologists and Bard's action limits. He may also provide testimony that was the subject

1 of his previous deposition testimony.

2           **Robert Cortelezzi**

3           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
4           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
5           404-322-6000  
6           Fact Witness

7           **Subject Matter:** Mr. Cortelezzi was an employee at BPV from approximately 1990 to  
8           2008; he was a Regional Manager from 2004 through 2008. He may testify regarding the  
9           matters that were the subject of his employment with Bard and his deposition taken on  
10          November 11, 2016, in the Bard IVC Filter MDL.

11           **Joni Creal**

12           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
13           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
14           404-322-6000  
15           Fact Witness

16           **Subject Matter:** Ms. Creal started with BPV in 2009. She is Associate Director of  
17          Regulatory Affairs. She may testify about BPV's overall regulatory strategy for its filter  
18          lines. She may also testify concerning other regulatory options considered by BPV when it  
19          determined the best approach to gain FDA clearance for its products. Ms. Creal may  
20          testify regarding communications between the FDA and BPV concerning the clearance  
21          process for its filters, and any communication between BPV and the FDA concerning  
22          these matters. Ms. Creal may also testify regarding BPV's response to requests from the  
23          FDA. Ms. Creal may also testify concerning BPV's decision to conduct clinical trials, and  
24          the process and procedures for clinical trials and studies.

25           Ms. Creal may also testify regarding the steps that BPV took to ensure that the  
26          FDA was always abreast of complications, product improvements, and potential changes  
27          to IFUs for its filters. In this regard, Ms. Creal may testify regarding BPV's open and  
28          frank communications with the FDA and the FDA's appreciation for BPV's openness and  
            honesty.

29           **Len DeCant**

30           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
31           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
32           404-322-6000  
33           Fact Witness

1     **Subject Matter:** Mr. DeCant is a former employee of BPV. He served as Vice President  
2     of Research and Development from 2002 through 2007. Mr. DeCant may testify regarding  
3     any and all aspects of the design, development, testing, clearance, evolution, and use of  
4     Bard filters, including Bard's policies and procedures for design, testing, and evaluation  
5     of filters. Mr. DeCant may also provide testimony that was the subject of his previous  
6     deposition testimony.

John DeFord

May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

10     **Subject Matter:** Dr. DeFord is currently Senior Vice President of Science, Technology  
11 and Clinical Affairs of C. R. Bard. Dr. DeFord may testify regarding any and all aspects  
12 of the design, development, testing, clearance, evolution, and use of Bard filters, including  
13 Bard's policies and procedures for design, testing, marketing and evaluation of filters.  
14 Dr. DeFord may also provide testimony that was the subject of his previous deposition  
15 testimony.

# Mary Edwards

May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

19 **Subject Matter:** Ms. Edwards is a former Vice President for Regulatory/Clinical Affairs  
20 of BPV. She may provide testimony regarding of the regulatory clearance process  
21 undertaken by BPV for the Recovery® Filter including the 510(k) processes and actions  
22 taken by BPV. Additionally, Ms. Edwards may testify concerning BPV's overall  
23 regulatory strategy for its filter lines, including the regulatory approach taken by BPV  
24 concerning the Recovery® Filter. In addition, Ms. Edwards may also testify concerning  
25 other regulatory options considered by BPV when it determined the best approach to gain  
26 FDA clearance for its new product. Ms. Edwards may testify regarding the regulatory  
27 history of Bard's filters, communications between the FDA and BPV concerning the  
28 Recovery® Filter, the clearance process for the Recovery® Filter, and post-clearance

1 communications BPV had with the FDA while she was employed with BPV and  
2 testimony that was the subject of her depositions.

3                   **Audrey Fasching, Ph.D., P.E.**

4                   Anamet, Inc.  
5                   26102 Eden Landing Road, Suite 3  
6                   Hayward, CA 94545  
7                   510-887-8811  
8                   Expert Witness

9  
10                 **Subject Matter:** Dr. Fasching is a metallurgical engineer with experience in the areas of  
11 failure analysis, welding, heat treatment, corrosion and biomaterials, including nitinol.  
12 She is a Senior Materials Engineer at Anamet. She may provide expert testimony about  
13 the properties and uses of nitinol in medical devices, industry standards for manufacture  
14 of medical device grade nitinol, her observations of the various filter conditions through  
15 examination of the filter at issue in this case and other Bard IVC filters. Dr. Fasching may  
16 respond to assumptions, opinions, and testimony offered by Plaintiffs' expert  
17 Dr. McMeeking. Dr. Fasching is expected to offer opinions and to testify consistent with  
18 her expert report(s) served in the MDL, and her previous deposition testimony.

19                   **David W. Feigal, M.D., M.P.H.**

20                   11806 Barranca Road  
21                   Santa Rosa Valley, CA 93012  
22                   540-738-2550  
23                   Expert Witness

24                 **Subject Matter:** Dr. Feigal is a medical doctor with a Master's Degree in Public Health  
25 in the fields of epidemiology and biostatistics. Dr. Feigal may provide expert testimony as  
26 an epidemiologist regarding the available resources for analysis of complications rates in  
IVC filters, including the SIR Guidelines and the limitations of those resources in  
accurately reporting rates, predicting rates, or comparing rates of those devices. He may  
respond to assumptions, opinions, and testimony offered by various Plaintiffs' experts as  
they relate to such analyses. Dr. Feigal is expected to offer opinions and testify consistent  
with his expert report served in the MDL, and his previous deposition testimony.

27                   **Thomas Ferari**

28                   May be contacted c/o Nelson Mullins Riley & Scarborough LLP

1                   201 17th Street NW, Suite 1700, Atlanta, GA 30363  
2                   404-322-6000  
2                   Fact Witness

3                   **Subject Matter:** Mr. Ferari is a contract engineer for Bard. He may provide testimony  
4                   that was the subject of his previous deposition.

5                   **Timothy Fischer**

6                   May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
6                   201 17th Street NW, Suite 1700, Atlanta, GA 30363  
7                   404-322-6000  
7                   Fact Witness

8                   **Subject Matter:** Mr. Fischer is a former employee of BPV. He may provide testimony  
9                   that was the subject of his prior deposition.

10                  **Kay Fuller**

11                  308 Meadowlark Rd  
11                  Santa Ynez, CA 93460

12                  **Subject Matter:** Ms. Fuller is a former employee of BPV. She may provide testimony  
13                  that was the subject of her previous deposition.

14                  **Brooke Gillette**

15                  May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
15                  201 17th Street NW, Suite 1700, Atlanta, GA 30363  
16                  404-322-6000  
16                  Fact Witness

17                  **Subject Matter:** Ms. Gillette is a former employee of Bard. She may provide testimony  
18                  that was the subject of her previous deposition.

19                  **Christopher Ganser**

20                  May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
20                  201 17th Street NW, Suite 1700, Atlanta, GA 30363  
21                  404-322-6000  
21                  Fact Witness

22                  **Subject Matter:** Mr. Ganser is a retired employee of C. R. Bard who has worked for Bard  
23                  for approximately twenty-two years, and retired in 2011. He held various positions while  
24                  working for Bard, Vice President of Quality Assurance and Environmental Services and  
25                  Safety. Mr. Ganser may testify concerning how such policies, procedures, and practices  
26                  were developed, implemented and reviewed. Mr. Ganser may also testify concerning any  
27                  and all aspects of Bard's quality control and field assurance practices and procedures that  
28                  are, or have been, in place with respect to Bard's IVC filters as well as testimony that was

1 the subject of his deposition.

2           **Holly Glass**

3           8280 Greensboro Drive, Suite 601  
4           McLean, VA 22101  
5           703-752-1115  
6           Fact Witness

7           **Subject Matter:** Ms. Glass was Vice President Government & Public Relations at C. R.  
8           Bard from 2002 through 2009. She may testify regarding the matters that were the subject  
9           of her employment with Bard and her deposition.

10           **Clement J. Grassi, M.D., FSIR**

11           18 Sussex Road  
12           Winchester, MA 01890  
13           617-732-7263  
14           Expert Witness

15           **Subject Matter:** Dr. Grassi is a medical doctor and is a Fellow of the Society of  
16           Interventional Radiology. He is certified in Radiology and holds a Certificate of Added  
17           Qualifications in Vascular and Interventional Radiology. From 1985 to 2001, Dr. Grassi  
18           held positions of Clinical Fellow, Instructor, and Assistant Professor of Radiology at  
19           Harvard Medical School. He is currently affiliated with Hallmark Health and partners  
20           Healthcare System. Dr. Grassi may provide expert testimony about the historical use,  
21           risks, and benefits of IVC filters; the health conditions that IVC filters are used to treat;  
22           and his experience with the Society of Interventional Radiology, specifically including the  
23           history and use of the Quality Improvement Guidelines and Practice Parameters relating to  
24           IVC Filters that have been published by the SIR. He may also testify about the medical  
25           literature related to IVC filters. He may respond to assumptions, opinions, and testimony  
26           offered by various Plaintiffs' experts as they relate to the same. Dr. Grassi is expected to  
27           offer opinions and testify consistent with his expert report served in the MDL, and his  
28           previous deposition and trial testimony.

29           **Mickey Graves**

30           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
31           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
32           404-322-6000  
33           Fact Witness

34           **Subject Matter:** Mr. Graves is a Senior Research and Development Engineer with BPV.

1 Mr. Graves may testify about BPV's policies and procedures in place for its research and  
2 development of its products, including IVC Filters. He may testify regarding the testing,  
3 development, and design of Bard's IVC Filters. He may also testify regarding the  
4 evolution of Bard's IVC Filters, including the fact that Bard is constantly evaluating the  
5 medical devices it sells, and it is constantly striving to improve the performance of those  
6 devices. He may also provide testimony that was the subject matter of his previous  
7 deposition testimony.

Janet Hudnall

May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

**Subject Matter:** Ms. Hudnall is a former employee of BPV who worked for BPV from 1998 to 2008. While at BPV, Ms. Hudnall held various positions, including Senior Marketing Manager. In those roles, Ms. Hudnall was involved with and has personal knowledge of, among other things, BPV's marketing strategies, policies, and practices with regard to the Bard's IVC filter line of products. Ms. Hudnall may testify concerning BPV's marketing strategies, policies, and practices with regard to the Recovery® and G2® Filters.

Ms. Hudnall may also testify concerning the training provided by BPV to physicians to familiarize them with the implantation and retrieval of the G2® Filter. Ms. Hudnall may also testify concerning BPV's practices and policies regarding complaints that were communicated by users. Ms. Hudnall may also testify concerning BPV's decision to conduct a clinical trial, called the EVEREST Study, and issues and events associated with or related to the EVEREST Study. In this regard, Ms. Hudnall may testify concerning the selection and clearance process for securing investigators and investigation sites, the creation and development of the study protocol, the creation and development of the informed consent form, and the steps taken by BPV to ensure that the study ran properly and according to established guidelines. She may also provide

1 testimony that was the subject of her previous deposition testimony.

2           **Brian Hudson**

3           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
4           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
4           404-322-6000  
4           Fact Witness

5           **Subject Matter:** Mr. Hudson has been an employee of BPV since 1999 as a Quality  
6           Engineering Technician, a Senior Engineering Technician, and a Quality Engineer,  
7           Mr. Hudson may provide testimony regarding filter risk assessment and analysis, review  
8           of testing protocols and regulatory compliance data, and the creation of Failure Modes and  
9           Effects Analyses (FMEA) that assess the potential hazards related to filters and the  
10          mitigation of those hazards. He may also provide testimony that was the subject of his  
11          previous deposition testimony.

12           **Sanjeeva Kalva, M.D.**

13           c/o Beus Gilbert  
13           701 N. 44St.  
14           Phoenix, Arizona 85005  
14           Expert Witness

15           **Subject Matter:** Dr. Kalva is an interventional radiologist retained by plaintiffs as an  
16          expert witness. He is expected to testify about the expert report he partially authored with  
17          Dr. Thomas Kinney and Dr. Ann Roberts, and their compensation as expert witnesses. He  
18          is further expected to testify consistent with his deposition given in the MDL.

19           **Sanjeeva Kandarpa, M.D.**

20           National Institute of Biomedical Imaging and Bioengineering  
20           Division of Applied Science and Technology  
21           9000 Rockville Pike  
21           Building 31 Room 1C14 31 Center Dr. Bethesda, MD 20814

22           **Subject Matter:** Dr. Kandarpa was the medical monitor for the Everest Study. He may  
23          provide testimony that was the subject of his previous deposition testimony.

24           **John Lehman, M.D.**

25           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
25           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
26           Fact Witness

27           **Subject Matter:** Dr. Lehman was Group Medical Director and Vice President of Medical  
28          Affairs for C. R. Bard from 1991 to 1995; he was a consultant and acting Medical

1 Director for C. R. Bard in 2003 and 2004. He may provide testimony regarding the  
2 matters that were the subject of his work with Bard and his depositions.

3           **William Little**

4           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
5           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
6           404-322-6000  
7           Fact Witness

8           **Subject Matter:** Mr. Little is BPV's former Vice President of Global Marketing. He may  
9           provide testimony regarding BPV's marketing strategies, policies, and practices with  
10          regard to Bard's IVC filter line of products. He may also testify regarding  
11          communications by Bard to health care providers regarding its filters and changes or  
12          revisions to those communications over time. He may also provide testimony that was the  
13          subject matter of his previous deposition testimony.

14           **Judy Ludwig**

15           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
16           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
17           404-322-6000  
18           Fact Witness

19           **Subject Matter:** Ms. Ludwig is currently Senior Manager of Field Assurance at BPV.  
20          Ms. Ludwig may testify regarding any and all aspects of Bard's quality assurance  
21          processes that are in place or that have been in place for Bard's retrievable IVC filters.  
22          Ms. Ludwig may testify regarding Bard's processes and procedures for adverse complaint  
23          handling, complaint investigation, and reporting of adverse events to the FDA regarding  
24          its filters. She may also testify to certain communications and inspections/audits with  
25          FDA. To the extent that evidence related to the FDA Warning and 483 Letters is admitted,  
26          Ms. Ludwig may offer testimony regarding the same. Ms. Ludwig may also provide  
27          testimony that was the subject of her previous deposition testimony.

28           **John McDermott**

29           May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
30           201 17th Street NW, Suite 1700, Atlanta, GA 30363  
31           404-322-6000  
32           Fact Witness

33           **Subject Matter:** Mr. McDermott was President of BPV from 1996 through 2006. He may  
34          testify about matters that were the subject of his employment with Bard and his

1 depositions.

2 **Patrick McDonald**

3 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
4 Fact Witness

5 **Subject Matter:** Mr. McDonald is an employee of BPV as a Sales Representative and  
6 Field Sales Trainer. He may testify regarding the matters that were the subject of his  
7 deposition.

8 **Michael Miller, MD**

9 University of Maryland School of Medicine  
Cardiovascular Medicine Division  
10 110 S Paca St., Suite 7-124  
Baltimore, MD, 21201

11 **Subject Matter:** Dr. Miller is a cardiologist and an expert retained by Bard. He may  
12 testify regarding the opinions in his expert reports submitted in this case.

13 **Leah Nitke, D.O.**

14 Aurora Health Center  
2845 Greenbrier Rd, Ste 120  
15 Green Bay, WI 54311

16 **Subject matter:** Dr. Nitke is Ms. Tinlin's primary care provider and may testify  
17 regarding her care and treatment of Ms. Tinlin. She may testify regarding the matters that  
18 were the subject of her deposition.

19 **David Owens, MD**

20 4545 Harris Trail  
Atlanta, GA 30327

21 **Subject Matter:** Dr. Owens is a radiologist and an expert retained by Bard. He may  
22 testify regarding the opinion in his expert report submitted in this case.

23 **Daniel Orms**

24 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
25 Fact Witness

26 **Subject Matter:** Mr. Orms is a former employee of BPV. He may testify about matters  
27 that were the subject of his employment with Bard and his depositions.

28 **Shari O'Quinn**

1 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
2 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
3 404-322-6000  
Fact Witness

4 **Subject Matter:** Ms. O'Quinn is a former employee of BPV who worked for BPV from  
5 2003 to 2007. Ms. O'Quinn held three different positions while working for BPV,  
6 including Manager of Regulatory Affairs, Director of Regulatory Affairs, and Director of  
7 Regulatory and Clinical Affairs. Ms. O'Quinn may testify concerning BPV's overall  
8 regulatory strategy for its filter lines, including the regulatory approach taken by BPV  
9 concerning the Bard filters. Ms. O'Quinn may testify regarding communications between  
10 the FDA and Bard concerning Bard's filters. She may also testify concerning Bard's post-  
11 market activities concerning Bard's IVC filters, including investigations, and  
12 communications with FDA. She may also provide testimony that was the subject of her  
previous testimony.

13 **Abithal Raji-Kubba**

14 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
15 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
16 404-322-6000  
Fact Witness

17 **Subject Matter:** Ms. Raji-Kubba was the Vice President of Research and Development  
18 for BPV. She was with the company from at least 2007 through 2011. She may testify  
19 regarding her involvement in and knowledge of the design modifications that were made  
20 to Bard's IVC filter line of products and the premarket testing that was conducted on the  
21 modified devices. She may also testify regarding her knowledge regarding why these  
22 design changes were needed and if and to what extent they made each IVC filter a safer  
23 device and could have been instituted sooner. She may also provide testimony that was  
the subject of her previous deposition testimony.

24 **Mike Randall**

25 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
26 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
27 404-322-6000  
Fact Witness

1     **Subject Matter:** Mr. Randall is the former Director of Research and Development for  
2 BPV. Mr. Randall may provide testimony regarding biomedical and biomechanical  
3 engineering generally, as well as testimony regarding the design, development,  
4 manufacture, testing, clearance, evolution, and use of Bard filters, specifically.  
5 Mr. Randall may also provide testimony that was the subject of his previous testimony.

6                         **Joshua Riebe, MD**  
7                         Green Bay Radiology  
8                         2941 S Ridge Rd  
9                         Green Bay, WI 54304

10     **Subject Matter:** Dr. Riebe implanted the filter in Mrs. Tinlin. He may testify about his  
11 care and treatment of Mrs. Tinlin. He may also provide testimony that was the subject of  
12 his deposition in this case.

13                         **Kimberly Romney**  
14                         May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
15                         201 17th Street NW, Suite 1700, Atlanta, GA 30363  
16                         404-322-6000  
17                         Fact Witness

18     **Subject Matter:** Ms. Romney is currently the Senior Product Manager for C. R. Bard,  
19 Inc. She may provide testimony regarding BPV's marketing strategies, policies, and  
20 practices with regard to Bard's IVC filter line of products. Ms. Romney may also testify  
21 regarding communications by Bard to health care providers regarding its filters and  
22 changes or revisions to those communications over time. She may also provide testimony  
23 that was the subject of her previous deposition testimony.

24                         **Gin Schulz**  
25                         May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
26                         201 17th Street NW, Suite 1700, Atlanta, GA 30363  
27                         404-322-6000  
28                         Fact Witness

29     **Subject Matter:** Ms. Schulz is a former employee of C. R. Bard, Inc. While at C. R.  
30 Bard, Inc., Ms. Schulz was the Staff Vice President of Quality Assurance Operations.  
31 Prior to working in this capacity, she worked for BPV as a Vice President of Quality  
32 Assurance. Ms. Schulz may testify live at trial regarding any and all aspects of Bard's  
33 quality assurance processes that are in place or that have been in place for Bard's IVC

1 filters. Ms. Schulz may testify regarding Bard's processes and procedures for adverse  
2 complaint handling, complaint investigation, and reporting of adverse events to the FDA  
3 regarding its filters. Ms. Schulz may also provide testimony that was the subject of her  
4 previous deposition testimony.

5 Based on reports received by Bard, she may also testify regarding the rates of  
6 complications with Bard's IVC filters and any analysis performed by Bard regarding  
7 adverse event rates. Ms. Schulz may also testify that the complication rates with Bard's  
8 commercially available filters (whether fracture, migration, perforation, or tilt) remain  
9 below the guidelines established by the Society of Interventional Radiologists and Bard's  
10 action limits. She may also testify that, upon receiving reports of adverse events, Bard was  
11 and has been proactive in investigating those reports and analyzing whether the risk of  
12 fracture for its products is in line with industry standards and guidelines, which it is and  
13 always has been. She may also provide testimony that was the subject of her previous  
14 deposition testimony.

15 **Christopher Smith**

16 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
17 Fact Witness

18 **Subject Matter:** Mr. Smith is a former employee of BPV. He may testify about matters  
19 that were the subject of his employment with Bard and his deposition.

20 **Heather Stanko, MD**

21 Neurology Consultants of Bellin Health  
725 South Webster Ave, Suite 201  
22 Green Bay, WI 54301

23 **Subject Matter:** Dr. Stanko is Mrs. Tinlin's neurologist. She may testify about her care  
24 and treatment of Mrs. Tinlin. She may testify about matters that were the subject of her  
25 deposition given in this case.

26 **Piotr Sobieszczyk**

27 Harvard Medical School  
Department of Medicine  
28 Cardiovascular Division  
75 Francis Street

1 Boston, MA 02115  
2

3       **Subject Matter:** Dr. Sobieszczyk is a Cardiovascular Specialist and was retained by Bard  
4 as an expert. He may testify about the matters contained in his expert report in this case  
and his prior testimony in the MDL.

5       **William Stavropoulos, MD**

6       May be contacted c/o Samantha Conway, Christie & Young, P.C.  
7                   1880 John F. Kennedy Blvd, 10th Floor  
8                   Philadelphia, PA 19103  
9                   Fact Witness

10      **Subject Matter:** Dr. Stavropoulos was the principal investigator for his facility on the  
11 EVEREST study. He has written articles concerning IVC filters. Additionally,  
12 Dr. Stavropoulos may testify regarding his clinical experience with IVC filters such as his  
13 experience with and techniques for placing and retrieving IVC filters, as well as  
14 indications for the use of IVC filters. He may also testify regarding the advantages of  
15 retrievable IVC filters. He may discuss the benefits, risks, and potential complications of  
16 IVC filters, such as migration, fracture, and perforation, and the imaging and other  
17 evaluation of those events and their clinical significance, if any. He may also testify  
18 regarding the MAUDE database and whether it can be used to determine the fracture rate  
19 of a medical device. He may also discuss the dynamic nature of the IVC as well as the  
body's reaction to and endothelialization of IVC filters. He may also testify about  
matters that were the subject of his deposition.

20       **Jack Sullivan**

21       May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
22                   201 17th Street NW, Suite 1700, Atlanta, GA 30363  
23                   404-322-6000  
24                   Fact Witness

25      **Subject Matter:** Mr. Sullivan was a former Regional Sales Manager for BPV from 2005  
26 to 2013. Prior to 2005, he held other sales positions with BPV. He may testify about  
27 BPV's sales practices and procedures, and the sales person's role in interacting with a  
doctor and the responsibility of sales people to report adverse events as well as about  
28 matters that were the subject of his depositions.

1                   **Mehdi Syed**

2                   May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
3                   201 17th Street NW, Suite 1700, Atlanta, GA 30363  
4                   404-322-6000  
5                   Fact Witness

6                   **Subject Matter:** Mr. Syed is the current Vice President of Operations Finance at C. R.  
7                   Bard, Inc. Mr. Syed may testify about the net worth of BPV and C. R. Bard, Inc., as well  
8                   as the percentage of Bard's revenue attributable to BPV and filter products specifically.  
9                   Mr. Syed may also testify about the nature of Bard's shareholders and the process and  
rationale behind dividend payments. He may also provide testimony that is the subject of  
his deposition.

10                  **Alex Tessmer**

11                  May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
12                  201 17th Street NW, Suite 1700, Atlanta, GA 30363  
13                  404-322-6000  
14                  Fact Witness

15                  **Subject Matter:** Mr. Tessmer is a Product Manager at BPV. Mr. Tessmer was previously  
16                  employed by BPV as an engineer between 1997 and June 2005. In that position,  
17                  Mr. Tessmer contributed to filter product development occurring during the period 2002  
18                  to June 2005. He may provide general testimony regarding mechanical engineering and  
specific testimony regarding product design, technology development, and materials  
testing. He may also provide testimony that was the subject of his previous deposition  
testimony.

19                  **Ronald A. Thisted, Ph.D.**

20                  Office of the Provost  
21                  The University of Chicago  
22                  Levi Hall, Room 432  
23                  5801 South Ellis Avenue  
24                  Chicago, IL 60637  
25                  773-702-5539  
26                  Expert Witness

27                  **Subject Matter:** Dr. Thisted is a Professor in the Department of Public Health Sciences,  
the Department of Statistics, the Department of Anesthesia & Critical Care, the  
Undergraduate College, and the Committee on Clinical Pharmacology and  
Pharmacogenomics at the University of Chicago. He is an expert in the fields of statistics,

1 biostatistics, mathematics, and epidemiology. He may respond to assumptions, opinions,  
2 and testimony offered by various Plaintiffs' experts as they relate to the same. Dr. Thisted  
3 is expected to offer opinions and testify consistent with his expert report served in the  
4 MDL, and his previous deposition testimony.

5 **Donna-Bea Tillman, Ph.D., MPA, FRAPS**

6 Biologics Consulting  
7 400 N. Washington Street, Suite 100  
8 Alexandria, Virginia 22314  
9 703-739-5695  
10 Expert Witness

11 **Subject Matter:** Dr. Tillman may provide expert testimony concerning FDA regulatory  
12 requirements, FDA regulatory compliance, the FDA clearance process, and post-clearance  
13 monitoring requirements. Dr. Tillman may further testify about the specific steps Bard  
14 followed to obtain FDA clearance of its IVC filters, and Bard's compliance with post-  
15 clearance monitoring requirements. To the extent that evidence related to the FDA  
16 Warning and 483 Letters is admitted, Dr. Tillman may testify regarding the same.  
17 Dr. Tillman is expected to offer opinions and testify consistent with her expert report(s)  
18 served in the MDL and her previous testimony.

19 **Debra Tinlin**

20 408 E. Park St.  
21 Bonduel, WI 54107

22 **Subject Matter:** Mrs. Tinlin is a plaintiff.

23 **James Tinlin**

24 408 E Park St  
25 Bonduel, WI 54107

26 **Subject Matter:** Mr. Tinlin is a plaintiff.

27 **Scott Trerotola, MD**

28 May be contacted c/o Samantha Conway, Christie & Young, P.C.  
1880 John F. Kennedy Blvd, 10th Floor  
Philadelphia, PA 19103  
Fact Witness

29 **Subject Matter:** Dr. Trerotola may testify regarding his clinical experience with IVC  
30 filters such as his experience with and techniques for placing and retrieving IVC filters, as

1 well as indications for the use of IVC filters. He may also testify regarding the advantages  
2 of retrievable IVC filters. He may discuss the benefits, risks, and potential complications  
3 of IVC filters, such as migration, fracture, and perforation, and the imaging and other  
4 evaluation of those events and their clinical significance, if any. He may also discuss the  
5 dynamic nature of the IVC as well as the body's reaction to and endothelialization of IVC  
6 filters. He may also provide testimony that was the subject of his previous deposition  
7 testimony.

8 **Doug Uelman**

9 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
10 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

11 **Subject Matter:** Mr. Uelmen was employed by Bard from 1996 to 2005 as Vice  
12 President for Quality Assurance. Prior to working in that capacity, Mr. Uelmen was  
13 BPV's Director of Quality Assurance. Mr. Uelmen may testify regarding any and all  
14 aspects of Bard's quality control processes that are in place or that have been in place for  
15 Bard's IVC filters. Mr. Uelmen may testify regarding Bard's processes and procedures for  
16 adverse complaint handling, complaint investigation, and reporting of adverse events to  
17 the FDA regarding its filters. He may also provide testimony that was the subject of his  
18 previous deposition testimony.

19 **John Van Vleet**

20 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
21 201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
Fact Witness

22 **Subject Matter:** Mr. Van Vleet an employee of BPV. While at BPV, Mr. Van Vleet has  
23 been the Vice President of Regulatory and Clinical Affairs since 2007. Mr. Van Vleet may  
24 testify concerning any and all aspects of Bard's clinical affairs policies, procedures, and  
25 practices that are, or have been, in place with respect to Bard's IVC filters. Mr. Van Vleet  
26 may also testify regarding the regulatory clearance process and communications between  
27 the FDA and BPV. Mr. Van Vleet may also provide testimony that was the subject of his  
28 deposition testimony or the subject of declarations/affidavits he has submitted in this

1 action.

2                   **Timothy Vartanian, MD, PhD**

3                   Weill Cornell Medicine  
4                   Brain and Mind Research Institute  
5                   Judith Jaffe Multiple Sclerosis Center  
6                   1305 York Avenue, 2<sup>ND</sup> Floor  
7                   New York, NY 10021, USA

8                   **Subject Matter:** Dr. Vartanian is neurologist and was retained by Bard as an expert in  
9                   this case. He may testify about the matters in his expert report produced in this case.

10                  **Carol Vierling**

11                  May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
12                  201 17th Street NW, Suite 1700, Atlanta, GA 30363  
13                  404-322-6000  
14                  Fact Witness

15                  **Subject Matter:** Ms. Vierling is a former employee of BPV who held the position of  
16                  Director of Regulatory Affairs from 1992 through June 2002. Ms. Vierling may also  
17                  testify regarding the 510(k) submission submitted by Bard to the FDA for the Recovery®  
18                  Filter in 2002. In this regard, she may testify regarding her signing of the Truthfulness and  
19                  Accuracy Statement included in that submission. She may also testify regarding the cover  
20                  letter to the FDA that accompanied the 510(k) submission, why it identified Kay Fuller as  
21                  the new FDA contact person for this device, how she signed that cover letter, and why she  
22                  signed the cover letter in the manner that she did. She may also testify to her interactions  
23                  with Kay Fuller and that Ms. Fuller never expressed any concerns to her regarding the  
24                  Recovery® Filter 510(k) submission, the testing of that device, the safety or efficacy of  
25                  that device, or the Asch clinical study regarding that device. She may also provide  
26                  testimony that was the subject of her previous deposition testimony.

27                  **Bryan Vogel**

28                  May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
29                  201 17th Street NW, Suite 1700, Atlanta, GA 30363  
30                  404-322-6000  
31                  Fact Witness

32                  **Subject Matter:** Mr. Vogel is a Principal Clinical Assurance Specialist at BPV. He may  
33                  testify regarding his role and Bard's processes, procedures, and practices for adverse  
34                  complaint handling, complaint investigation, and reporting of adverse events to the FDA

1 regarding its filters. He may also testify regarding the qualifications and training of BPV's  
2 Field Assurance personnel. He may also provide testimony that was the subject matter of  
3 his previous deposition testimony.

4 **Allison Walsh**

5 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
6 Fact Witness

7 **Subject Matter:** Ms. Walsh is a former employee of Bard. She may testify regarding the  
8 matters that were the subject of his deposition.

9 **John Weiland**

10 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
11 Fact Witness

12 **Subject Matter:** Mr. Weiland is a retired President and Chief Operating Officer of Bard.  
13 He may testify regarding the matters that were the subject of his deposition.

14 **John Wheeler**

15 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
16 Fact Witness

17 **Subject Matter:** Mr. Wheeler is a former Field Assurance Engineering Manager at BPV.  
18 He may testify regarding Bard's processes, procedures, and practices for adverse  
19 complaint handling, complaint investigation, and reporting of adverse events to the FDA  
20 regarding its filters. He may also testify regarding the qualifications and training of BPV's  
21 Field Assurance personnel. He may also testify regarding BPV's tracking and trending of  
22 complaints regarding Bard IVC filters. He may also provide testimony that was the  
23 subject matter of his previous deposition testimony.

24 **Steve Williamson**

25 May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
201 17th Street NW, Suite 1700, Atlanta, GA 30363  
404-322-6000  
26 Fact Witness

27 **Subject Matter:** Mr. Williamson is the current President of BPV. Mr. Williamson may  
28 testify concerning BPV's broad and overarching policies as a company and specifically

1 concerning Bard's IVC filters, including, but not limited to, the companies' business  
2 practices, research and development, manufacturing, marketing and sales policies, and  
3 regulatory strategies and policies. He may also provide testimony that was the subject of  
4 his previous deposition testimony.

5                   **Mark Wilson**

6                   May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
7                   201 17th Street NW, Suite 1700, Atlanta, GA 30363  
8                   404-322-6000  
9                   Fact Witness

10                  **Subject Matter:** Mark Wilson was the Director of Sales, Training, and Development at  
11 C. R. Bard, Inc. from 2004 to 2011. Mr. Wilson may provide testimony regarding Bard's  
12 sales practices and procedures. He may also testify regarding training programs for Bard's  
13 sales personnel. He may also provide testimony that was the subject of his previous  
14 deposition.

15                   **Natalie Wong**

16                   May be contacted c/o Nelson Mullins Riley & Scarborough LLP  
17                   201 17th Street NW, Suite 1700, Atlanta, GA 30363  
18                   404-322-6000  
19                   Fact Witness

20                  **Subject Matter:** Ms. Wong is an employee of BPV. She began working for the company  
21 in 2002 and has been the Quality Engineering Manager in Field Assurance since 2007.  
22 Prior to working in this capacity, she worked for BPV as a Senior Quality Engineer.  
23 Ms. Wong may testify regarding any and all aspects of Bard's quality control and field  
24 assurance processes that are, or have been, in place for Bard's IVC filters. Ms. Wong may  
25 testify regarding Bard's processes and procedures for adverse complaint handling,  
26 complaint investigation, trending analysis, root cause analysis, data integrity audits, and  
27 design failure mode analysis relating to Bard's IVC filters.

28                  Based on reports received by Bard, she may also testify regarding the rates of  
29 complications with Bard's IVC filters and analyses performed by Bard regarding adverse  
30 event rates. She may also provide testimony that was the subject of her previous  
31 deposition testimony.

32                   **John Worland**

1                   21605 Crestone Needles Drive  
 2                   Parker, Colorado 80138

3                   **Subject Matter:** Mr. Worland is a radiology technician in Colorado. He may testify  
 4                   about the matters that were the subject of his deposition.

5                   **Any witness identified by Plaintiffs.**

6                   **F. LIST OF EXHIBITS**

7                   1. The parties have listed exhibits on their exhibit lists subject to pending  
 8                   motions in limine and other rulings by the Court. By listing exhibits, the parties do not  
 9                   contend that the exhibits are necessarily admissible and do not intend to waive any  
 10                  objection they have to the admissibility of the same.

11                  2. The parties have met and conferred on the issue of exchanging and  
 12                  providing to the Courtroom Deputy Clerk with impeachment exhibits 48 hours in advance  
 13                  of the trial. The parties agree they would like to provide any impeachment exhibits to the  
 14                  Courtroom Deputy Clerk, 24 hours before their intended use.

15                  3. As the Court has ordered in prior MDL trials, the parties agree to provide a  
 16                  list of exhibits to be used with each witness at least 24 hours before the witness is called to  
 17                  testify.

18                  4. If the Court grants Defendants' Motion *in Limine* relating to Recovery  
 19                  migration deaths, Defendants propose that the parties use the same redactions to exhibits  
 20                  agreed to and approved by the Court in the *Jones* and *Hyde* trials.

21                  5. The following Exhibit Lists are attached hereto: **Exhibit A** – Plaintiffs'  
 22                  Exhibit List with Defendants' Objections; **Exhibit B** – Defendants' Additional Exhibit  
 23                  List with Plaintiffs' and Defendants' Objections.

24                  a. **Defendants' Contention:** Many of the documents listed as potential  
 25                  exhibits were produced by Defendants subject to a Protective Order (Dkt. 268 and 269).  
 26                  Throughout this litigation the parties have been filing and moving to seal certain  
 27                  documents pursuant to that Order. However, the Protective Order does not cover the use  
 28                  of documents as exhibits at trial. (*See*, Dkt. 268, Para, 28). The Court addressed this in the

1 prior bellwether trials and in its ruling on Bard's Motion for reconsideration. Pursuant to  
 2 the Court's ruling in Dkt. 12069, Defendants raise this issue to preserve it and are  
 3 prepared to address it during the Pretrial Conference. Until the exhibits are admitted,  
 4 Defendants do not know which exhibits, if any, they need to move to seal. Defendants  
 5 request that the exhibits be maintained by the Court reporter and not made available  
 6 publicly throughout the trial and that Defendants be given a reasonable time after the  
 7 conclusion of the trial to determine whether they intend to file a motion to seal, and that  
 8 the Court set a briefing schedule for a post-trial briefing schedule on a motion to seal, if  
 9 Defendants determine that they intend to move to seal any of the admitted exhibits.

10                   b.     Plaintiffs' Contention: Plaintiffs disagree with this Defendants'  
 11 Contention, and maintain their position that exhibits are public record at the time admitted  
 12 into evidence, and that the Court need only adhere to its prior Order on these issues. *See*  
 13 Doc. 14446. Further, Plaintiffs contend Local Rule 5.6 regards the pre-trial sealing of  
 14 exhibits and has no application to the use of exhibits at trial.

15                   As the Court explained in its Orders, ““the release of information in open court is a  
 16 publication of that information and . . . operates as a waiver of any rights a party had to  
 17 restrict its future use.”” (Doc. 11642 at 2 (quoting *Carnegie Mellon Univ. v. Marvell Tech.*  
 18 *Grp., Ltd.*, No. CIV.A. 09-290, 2013 WL 1336204, at \*5 (W.D. Pa. Mar. 29, 2013); Doc.  
 19 12069 at 3; Doc. 14446.) The Court has explicitly held that trial exhibits are not subject to  
 20 the protective order. Doc. 14446. To the extent an exhibit was not merely admitted into  
 21 evidence but also was published or discussed in open court, the exhibit is no longer  
 22 confidential, and Defendants have waived the right to have the exhibit sealed. *See In re*  
 23 *Google Inc. Gmail Litig.*, No. 13-MD-02430-LHK, 2014 WL 10537440, at \*6 (N.D. Cal.  
 24 Aug. 6, 2014) (“[W]here, as here, the parties did not request closure of the courtroom . . .  
 25 and the disclosures were not inadvertent, the Court will not permit an ex post facto  
 26 redaction of statements made in open court[.]”); *Fleming v. Escort, Inc.*, No. CV 09-105-  
 27 S-BLW, 2013 WL 1290418, at \*4.

28

1       6. The following exhibits are admissible in evidence and may be marked in  
2 evidence by the Clerk:

3           a. Any exhibit listed in **Exhibits A and B** that is not objected to is  
4 agreed to by the parties as admissible.

5       7. As to the following exhibits, the parties have reached the following  
6 stipulations:

7       8. The following records are stipulated to be authentic and satisfy the business  
8 records exception, but the parties reserve all other available objections:

9           a. Plaintiffs' medical records and bills.

10      9. As to the following exhibits, the party against whom the exhibit is to be  
11 offered objects to the admission of the exhibit and offers the objection stated below:

12           a. Plaintiffs' Exhibits: See attached **Exhibit A**.

13           b. Defendants' Exhibits: See attached **Exhibit B**.

14       The parties shall submit their exhibit lists in writing, five days before trial, in a  
15 format to be designated by the Court at the Final Pretrial Conference, in WordPerfect®  
16 9.0 format either by e-mail to Nancy\_Outley@azd.uscourts.gov or on an IBM-compatible  
17 computer disk.

18       **G. DEPOSITIONS TO BE OFFERED**

19       The parties have included deposition designations subject to pending motions in  
20 limine and other rulings by the Court. By making those designations the parties do not  
21 contend that the testimony is necessarily admissible and do not intend to waive any  
22 objection they have to the admissibility of the same.

23       **1. Deposition Designations:**

24       Defendants' Position: Because of new issues raised by Plaintiffs regarding  
25 deposition designations and because of issues that occurred with the deposition  
26 designations played in the prior MDL trials, Defendants request that the parties provide  
27 depositions designations and the exhibits they intend to display at least 48 hours before  
28 the deposition designations are played, and that the completed transcript of the video to be

1 played and copies of the exhibits as they will be displayed be provided at least 24 hours  
 2 before the deposition designations are played.

3       Plaintiffs' Response: Plaintiffs do not agree that Defendants' proposal is  
 4 reasonable or necessary. There is nothing about this trial, or the deposition designations  
 5 alluded to by Defendants, that necessitates a departure from the process used in previous  
 6 trials. Further, the notice requirements that Defendants propose would be unreasonably  
 7 burdensome, and do not reflect practical realities of trial preparation, in which decisions  
 8 about specific exhibits, for example, are made more rapidly than what Defendants'  
 9 proposal contemplates.

10           a.       **Deposition of Dr. Kalva:**

11       Defendants' Position: As Defendants stated on the deposition submitted to the  
 12 Court for review, Defendants object to plaintiff's use of the deposition of Dr. Kalva on the  
 13 basis that Plaintiffs have not demonstrated that this expert witness is unavailable under  
 14 Federal Rule of Civil Procedure 32(a)(4) or Federal Rule of Evidence 804.

15       Plaintiffs' Position: As Plaintiffs stated in the deposition submitted to the Court,  
 16 Plaintiffs are only offering Dr. Kalva as a percipient witness and his role as the author of a  
 17 relevant article relating to his personal experience with Bard filters. His testimony does  
 18 not need to be treated any differently than that of other fact witnesses.

19           H.       **MOTIONS IN LIMINE (JURY TRIAL)**

20       All motions *in limine* have been filed and fully briefed, with the exception of  
 21 Plaintiffs' Motion *in Limine* No. 2, which Plaintiffs supplemented on April 8, 2019 (Doc.  
 22 16748) and to which Defendants are permitted, pursuant to the Court's Order of April 8,  
 23 2018 (Doc. 16749), to file a supplemental response by April 24, 2019. Those that have not  
 24 yet been ruled on are set forth in Section I, below.

25           I.       **LIST OF PENDING MOTIONS**

26       1.       Plaintiffs' Motion to Exclude Certain Opinions and Testimony of  
 27 Christopher S. Morris, M.D. (Doc. 15077);  
 28

1       2. Plaintiffs' Motion *in Limine* No. 1: Medical Care as Intervening Cause of  
2 Injury (Doc. 16576);

3       3. Plaintiffs' Motion *in Limine* No. 2: Vena Cava Size (Doc. 16578)  
4 (supplement filed on April 8, 2019 (Doc. 16748);

5       4. Plaintiffs' Motion *in Limine* No. 3 to Preclude Evidence of Unrelated  
6 Medical Conditions (Doc. 16577);

7       5. Plaintiffs' Motion *in Limine* No. 4: Bard's Internal Rates Based on  
8 Reporting Rates of Filter Complications (Doc. 16579);

9       6. Plaintiffs' Motion *in Limine* No. 5: Retrievable Filter Sales Versus SNF  
10 Filter Sales (Doc. 16580);

11       7. Plaintiffs' Motion *in Limine* No. 6: Social Security Disability Benefits  
12 Which are Barred by Wisconsin's Collateral Source Rule (Doc. 16581);

13       8. Defendants' Motion to Strike Portions of Dr. McMeeking's *Tinlin* Rule 26  
14 Report (Doc. 14016);

15       9. Defendants' Motion for Summary Judgment As to Plaintiffs Debra and  
16 James Frances Tinlin's Claims (Doc. 15071);

17       10. Defendants' Motion to Exclude the Tinlin Case-Specific Opinions of Robert  
18 M. McMeeking, Ph.D. (Doc. 15075);

19       11. Defendants' Motion *in Limine* No. 1 to Exclude Evidence of Recovery Filter  
20 Cephalad Migration Deaths (Doc. 16575);

21       12. Defendants' Motion *in Limine* No. 2 to Exclude Evidence of FDA Warning  
22 Letter (Doc. 16572);

23       13. Defendants' Motion *in Limine* No. 3 to Exclude Evidence of the Crisis  
24 Communications Plan (Doc. 16573);

25       14. Defendants' Motion *in Limine* No. 4 Regarding a Patient at Dr. Muehrcke's  
26 Hospital (Doc. 16574).

27

28

1                   **J. PROCEDURES FOR EXPEDITING TRIAL**

2                   The parties agree to the following procedures that might expedite trial to the extent  
 3 possible: (a) presenting stipulated summaries of work history and professional background  
 4 and qualifications of witnesses rather than using deposition excerpts. The parties agree to  
 5 meet and confer and at least 24 hours before a deposition is played to provide the  
 6 proposed summary to opposing counsel for review and approval; (b) stipulations on  
 7 authenticity and foundation; and (c) using the courtroom technology to expedite the  
 8 presentation of evidence. The parties will also contact Nancy Outley at 602-322-7645 to  
 9 arrange a time to visit the courtroom and examine its technology.

10                  **K. ESTIMATED LENGTH OF TRIAL**

11                  All times set forth by the parties below are approximate and given to the best of  
 12 counsels' ability. Nothing about these stated times is intended to limit the total time  
 13 available to either party in the event less time is used for one of the categories, as that time  
 14 will simply be reallocated to another category.

15                  33 hours for Plaintiffs

16                  1.5 hours opening statement

17                  2.5 hours for closing, rebuttal and punitive damages

18                  29 hours for direct and cross examination

19

20                  These estimates are based on the Court's order (Doc. 12971) allocating 33 hours to  
 21 Plaintiffs. Plaintiffs believe that they may require additional time, and reserve the right to  
 22 make that request during trial.

23                  30 hours for Bard

24                  Bard objects to any additional time being added to the trial after the entry of this  
 25 Pretrial Order. In the previous MDL trials, Bard made strategic decisions based on the  
 26 time allocated by the Court from the very outset of trial. Those strategic decisions  
 27 included, but were not limited to, determining the amount of time to spend on the cross-  
 28 examination of several of the Plaintiffs' principal experts. The Defendants believe that the

1 Court's decision to afford the Plaintiffs additional time, while certainly within the Court's  
 2 discretion, unfairly penalized the Defendants for abiding by the limitations set by the  
 3 Court and caused prejudice (particularly given how the Plaintiffs squandered the time  
 4 originally provided with repetitive questioning and the frequent focus on collateral issues).  
 5 See, e.g., *Amarel v. Connell*, 102 F.3d 1494, 1514 (9th Cir. 1996), as amended (Jan. 15,  
 6 1997); see also *Gen. Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1509  
 7 (9th Cir. 1995) (noting unfairness to defendant in providing Plaintiffs additional time after  
 8 defendant had already made strategic decisions based on the court's original allocation).

9           **L. JURY DEMAND**

10 A jury trial has been requested.

11 The parties stipulate that the request was timely and properly made.

12           **M. JOINT PROPOSED JURY INSTRUCTIONS, JOINT PROPOSED**  
 13           **VOIR DIRE QUESTIONS, AND PROPOSED FORMS OF VERDICT**  
 14           **FOR JURY TRIALS**

15 The Joint Proposed Jury Instructions and Proposed Forms of Verdict shall be filed  
 16 contemporaneously with this Final Proposed Pretrial Order. As Case Management Order  
 17 No. 43 directs, the parties' Proposed Jury Instructions will include an instruction  
 18 concerning Ms. Tinlin's remote participation in the trial. Because Case Management  
 19 Order No. 43 also provides that voir dire shall be limited to follow-up questions to the  
 20 jury questionnaire, the parties are not submitting separate or additional voir dire questions.

21           **N. CERTIFICATIONS**

22 The undersigned counsel for each of the parties in this action does hereby certify  
 23 and acknowledge the following:

24           1. All discovery has been completed.

25           2. The identity of each witness has been disclosed to opposing counsel.

26 Defendants cannot stipulate to this and incorporate their objections to Plaintiffs' multiple  
 27 experts in Section E.

28           3. Each exhibit listed herein: (1) is in existence; (2) is numbered; and (3) will  
 be disclosed and shown to opposing counsel at a later date mutually agreeable to the

1 parties. The parties agree demonstrative exhibits will be exchanged or made available for  
2 inspection at a later date agreed to by the parties.

3       4. The parties agree and stipulate that the statement of the case used in the  
4 juror questionnaire approved by the Court is to be used as the parties' joint statement of  
5 the case.

6       5. The parties have complied in all respects with the mandates of the Court's  
7 Rule 16 Scheduling Order and Order Setting Final Pretrial Conference.

8       6. The parties have made all of the disclosures required by the Federal Rules of  
9 Civil Procedure (unless otherwise previously ordered to the contrary).

10      7. The parties acknowledge that once this Proposed Final Pretrial Order has  
11 been signed and lodged by the parties, no amendments to this Order can be made without  
12 leave of Court.

13      **O. INFORMATION FOR COURT REPORTER**

14      In order to facilitate the creation of an accurate record, the Parties will file a  
15 "Notice to Court Reporter" **one week before trial** containing the following information  
16 that may be used at trial:

- 17      1. Proper names, including those of witnesses.  
18      2. Acronyms.  
19      3. Geographic locations.  
20      4. Technical (including medical) terms, names or jargon.  
21      5. Case names and citations.  
22      6. Pronunciation of unusual or difficult words or names.

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2

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Based on the foregoing,

**IT IS ORDERED** that this Proposed Final Pretrial Order jointly submitted by the parties is hereby **APPROVED** and **ADOPTED** as the official Pretrial Order of this Court.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

David G. Campbell  
United States District Judge